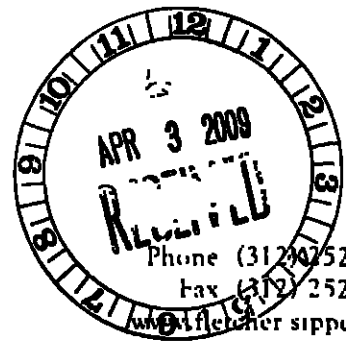


FLETCHER & SIPPEL LLC

ATTORNEYS AT LAW

29 North Wacker Drive
Suite 920
Chicago, Illinois 60606 2875

April 2, 2009



VIA FEDERAL EXPRESS

Ms Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S W
Washington, DC 20024

224823

ENTERED
Office of Proceedings

APR - 3 2009

Part of
Public Record

Re **Finance Docket No. 35110**
Florida Department of Transportation -- Acquisition
Exemption -- Certain Assets of CSX Transportation, Inc.

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Motion of Florida Department of Transportation to Dismiss Notice of Exemption** and the **Appendix to Motion of Florida Department of Transportation to Dismiss Notice of Exemption**, both dated April 2, 2009. A computer diskette containing the text of the Motion in MS Word 2003 format is attached.

Please note that expedited consideration of the Motion is requested.

One extra copy of the Motion, the Appendix and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William C. Sippel".

William C. Sippel
Attorney for Florida Department of Transportation

WCS:tjl

Enclosures

cc Parties on Certificate of Service

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35110

FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC

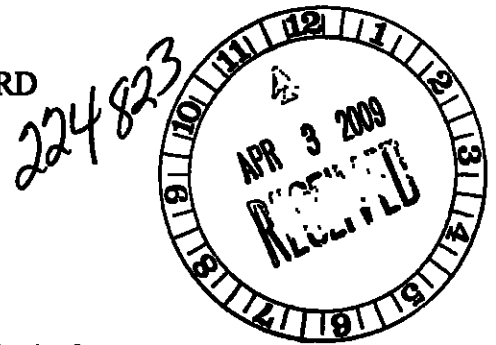
**MOTION OF
FLORIDA DEPARTMENT OF TRANSPORTATION
TO DISMISS NOTICE OF EXEMPTION**

EXPEDITED CONSIDERATION REQUESTED

William C Sippel
Thomas J. Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR FLORIDA
DEPARTMENT OF TRANSPORTATION**

Dated: April 2, 2009



ENTERED
Office of Proceedings

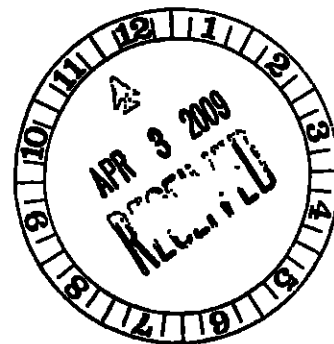
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BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO 35110

FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC



**MOTION OF
FLORIDA DEPARTMENT OF TRANSPORTATION
TO DISMISS NOTICE OF EXEMPTION**

Florida Department of Transportation ("FDOT") hereby seeks dismissal of its concurrently-filed verified notice of exemption in this docket as not presenting a transaction subject to the Board's jurisdiction under 49 U.S.C. § 10901. FDOT proposes to acquire the physical assets of a CSX Transportation, Inc. ("CSXT") rail line extending through Orlando, Florida (the "Orlando Line") in order to develop a new commuter rail service in the Orlando metropolitan area. CSXT will retain a perpetual, exclusive freight easement on the Orlando Line, and will continue to provide all common carrier rail freight service on the line. FDOT will fund significant improvements on the Orlando Line to accommodate shared commuter and freight operations. A carefully-crafted and perpetual operating and management agreement between CSXT and FDOT, including a detailed freight service plan developed through professional operational modeling, will assure that CSXT can fulfill all current and reasonably foreseeable rail freight needs.

Because CSXT will retain a permanent, exclusive freight operating easement on the Orlando Line and FDOT will acquire neither the right nor ability to provide or control freight service on the line, FDOT seeks a determination pursuant to Maine DOT -- Acq Exempt --

Maine Central R. Co., 8 I.C.C.2d 835 (1991) ("Maine DOT") and its progeny that FDOT's acquisition of the physical assets of the Orlando Line is not a transaction subject to the Board's jurisdiction under 49 U.S.C. § 10901. Accordingly, FDOT's verified notice of exemption in this docket should be dismissed.

In order to comply with Federal Transit Administration funding requirements for the new commuter rail service, FDOT must complete its acquisition of the Orlando Line (via escrow) by June 30, 2009. Expedited consideration of this motion is accordingly requested, to allow a Board decision by June 29, 2009.

BACKGROUND

A. The SunRail Project

FDOT is a governmental agency of the State of Florida and a non-carrier.¹ In cooperation with the Central Florida Commuter Rail Commission ("CFCRC"),² FDOT is developing the "SunRail" commuter rail system, a \$615 million project which will provide commuter passenger service at seventeen stations on the Orlando Line from as far north as DeLand through downtown Orlando to as far south as Kissimmee/Poinciana. Commuter operations will be initiated in two phases, with the initial service from Sand Lake Road in

¹ In 1988, FDOT acquired a CSXT rail line between West Palm Beach and Miami, Florida in order to initiate commuter rail operations over the line. CSXT provides freight service pursuant to an exclusive retained freight easement. The 1988 transaction occurred prior to the issuance of Maine DOT, and was the subject of informal consultations with Interstate Commerce Commission staff at that time. The parties have entered into a new South Florida Operating and Management Agreement that will modify certain arrangements on the West Palm Beach-Miami line. Certain conditions must be met before changes to the existing arrangement will become effective, and it is unknown at this time whether those conditions will be satisfied. FDOT will seek a Maine DOT determination with respect to the new agreement prior to its implementation.

² CRCFC is an interlocal governmental agency created by Orange, Osceola, Seminole and Volusia Counties and the City of Orlando.

Orlando to DeBary (near Sanford), 31 miles, expected to be operational by 2011. Phase Two will extend service north from DeBary to DeLand and south from Sand Lake Road to Poinciana by 2013. When both phases are completed, the total distance of SunRail's commuter service will be 61.5 miles.

The Federal Transit Administration ("FTA") issued a Finding of No Significant Impact ("FONSI") for the proposed project on April 27, 2007 (as supplemented on July 22, 2008),³ and has substantially completed its final environmental review. (Because of a change in vehicle technology proposed for the project, from self-propelled to locomotive-hauled cars, additional analysis and review is underway to determine noise and vibration impacts, if any, resulting from the change.) On August 11, 2008, FTA approved the project to enter the Final Design phase. Final state legislation necessary to proceed with the SunRail project is expected to be enacted by the Florida legislature within the next month.⁴ Further information regarding the SunRail project is available at www.sunrail.com.

FDOT's acquisition of the Orlando Line from CSXT is an integral component of the SunRail project. The Orlando Line is part of CSXT's so-called "A-Line,"⁵ extending from Jacksonville to Auburndale/Lakeland, Florida. CSXT today utilizes the A-Line for local and through freight train service, operating approximately 14-18 trains per day in or through

³ Available at www.fta.dot.gov/planning/environment/planning_environment_documents.html

⁴ An earlier version of the legislation was introduced during the 2008 legislative session, but was not enacted. FDOT will inform the Board when final legislative action is taken. This motion to dismiss and the related notice of exemption are being filed in the meantime in order to provide the Board with adequate decisional time, particularly in light of FDOT's request for expedited consideration.

⁵ So named because of its historic ownership by Atlantic Coast Line Railroad Company, a CSXT predecessor. Mileposts on the A-Line (and thus on the Orlando Line) begin with the letter "A" for this reason.

Orlando. The National Railroad Passenger Corporation ("Amtrak") operates two passenger trains a day in each direction⁶ over the A-Line, and Amtrak's *Auto-Train* service utilizes the A-Line to reach its southern terminus at Sanford, Florida, north of Orlando. Florida Central Railroad Company, Inc. ("FCEN"), a connecting Class III rail carrier, also operates on a portion of the A-Line through Orlando in order to conduct interchange with CSXT.⁷

In addition to the A-Line, CSXT has a second, parallel freight-only route between Jacksonville and Auburndale/Lakeland known as the "S-Line."⁸ FDOT and CSXT have agreed that

- 1) FDOT will acquire the Orlando Line from CSXT.
- 2) FDOT will upgrade the Orlando Line for shared use by the SunRail commuter service and by CSXT, Amtrak and FCEN. Today the Orlando Line is primarily single track, with one 7-mile stretch of double track and five controlled sidings. The FDOT improvements will result in a double-track corridor along nearly the entire 61.5-mile line,⁹ with crossovers approximately every 5 miles or less. In addition, the Orlando Line's signal system will be completely replaced and upgraded.

- 3) CSXT will divert approximately 8-9 daily through trains from the A-Line to the S-Line, including intermodal and automotive trains that will operate to a new terminal

⁶ The *Silver Star* and *Silver Meteor*, Trains 91-92 and 97-98, respectively

⁷ FCEN's trains enter the A-Line at Robinson Street near downtown Orlando, and operate south to CSXT's Taft Yard, a distance of approximately six miles

⁸ So named because of its historic ownership by Seaboard Air Line Railroad Company, another CSXT predecessor

⁹ The only remaining single-track portions of the Orlando Line will be 1) the northernmost seven miles of the line to DeLand; 2) the crossing of the St. Johns River near Sanford, and 3) a short, 1 ½ mile segment north of Winter Park

facility being developed near Winter Haven, Florida on the S-Line south of Auburndale. CSXT is separately undertaking capacity improvements on the S-Line, including new sidings, double-track extension and new or improved crossovers

These projects and the relevant agreements entered into by FDOT and CSXT assure that FDOT's ownership of the Orlando Line and the development of the SunRail commuter service will not interfere with or unduly burden CSXT's provision of rail freight service on the line. Nor will it adversely affect the operations of Amtrak and FCEN on the Orlando Line as existing tenants of CSXT. Because CSXT will retain, through a perpetual, exclusive easement, all necessary rights and powers to continue to provide common carrier freight service on the Orlando Line, the Board should find that FDOT's acquisition of the line's assets will not make FDOT a rail carrier and is not subject to the Board's jurisdiction.

FDOT has served a copy of this motion to dismiss and FDOT's notice of exemption on all known local shippers on the Orlando Line, and on Amtrak and FCEN.

B. FDOT-CSXT Agreements

FDOT and CSXT have executed, as relevant here, three agreements providing for FDOT's acquisition of the Orlando Line and the shared use of that line by FDOT and CSXT: a Contract for Sale and Purchase (the "Sale Contract"), provided, without its voluminous exhibits, at Tab 1 in the Appendix accompanying this motion, the Central Florida Operating and Management Agreement (the "CFOMA"), provided at Tab 2 in the Appendix,¹⁰ and a Transition Agreement, provided at Tab 3 in the Appendix. The conveyance Deed to be executed by CSXT,

¹⁰ The CFOMA includes as Exhibit 1 the CFCRT Freight Service Plan (Revision 5). That service plan is described further in the Verified Statement of F. William Lipfert, Jr., attached hereto as Attachment A.

which is Exhibit 4 to the Sale Contract and which contains CSXT's perpetual, exclusive retained freight easement, is separately provided at Tab 4 in the Appendix

1 Sale Contract

Pursuant to the terms of the Sale Contract, FDOT will acquire from CSXT the land, real property, rights-of-way and associated property of the Orlando Line, extending from milepost A-749.7 in DeLand to milepost A-814.1 in Poinciana, a distance of approximately 61.5 miles¹¹ in Volusia, Seminole, Orange and Osceola Counties, Florida. FDOT also will obtain an option to acquire the portion of CSXT's Aloma Spur extending approximately 5.8 miles from a connection with the Orlando Line at milepost AU-766.0 in Sanford, Florida to milepost AU-771.8 near Orlando/Sanford International Airport, as well as CSXT's entire DeLand Spur extending approximately 3.0 miles from a connection with the Orlando Line at milepost ASE-750.3 (DeLand Junction) to milepost ASE-753.3 near downtown DeLand. Sale Contract, § 3.¹² While FDOT does not intend to acquire the Aloma Spur and the DeLand Spur at this time, they are included in FDOT's concurrently-filed notice of exemption in this docket and in this motion to dismiss so that a further, redundant Maine DOT proceeding with respect to those lines would not be necessary in the future. FDOT requests that any jurisdictional determination made by the

¹¹ Due to a prior relocation project in Sanford, the distance between milepost A-768 and milepost A-771 on the Orlando Line is only 749 feet. This milepost equation is the reason that the actual length of the Orlando Line is 2.9 miles shorter than indicated by its milepost termini.

¹² An extensive Option Agreement relating to the Aloma Spur and the DeLand Spur appears as Exhibit 14 to the Sale Contract but is not included with the copy of the Sale Contract provided in the Appendix at Tab 1. Its provisions, as relevant here, with respect to the Aloma Spur and the DeLand Spur largely parallel the provisions of the Sale Contract with respect to the Orlando Line. Most pertinently, the Option Agreement provides for the same perpetual, exclusive retained freight easement on the Aloma Spur and the DeLand Spur as the Sale Contract provides for the Orlando Line, and provides that operations on the Aloma Spur and the DeLand Spur will be governed by the CFOMA.

Board pursuant to this motion to dismiss include both the Orlando Line and the Aloma/DeLand Spurs¹³

Section 1.01(a) of the Sale Contract provides that CSXT shall retain a perpetual easement (the "CSXT Easement") on the Orlando Line "for the purpose of the exclusive provision of rail freight service " The terms of the CSXT Easement are included in the Deed attached as Exhibit 4 to the Sale Contract (and separately provided herewith at Tab 4 in the Appendix) Specifically, the Deed reserves to CSXT:

an EASEMENT . IN PERPETUITY . FOR RAILROAD PURPOSES . . . in over or on the Property [i.e., the Orlando Line], including, but not limited to, the use of all the tracks or Trackage within the Property, but SUBJECT TO;

- 1 The terms, conditions and limitations of [the CFOMA] . . .
- .
3. Grantor [CSXT] and Grantee [FDOT] agree that the CSXT Easement is not retained to the exclusion of the use of the Easement Area and remainder of the Property by Grantee and its assigns, except for the exclusive provision of Rail Freight Service and as otherwise set forth in said CFOMA.
- 4 Grantee [FDOT] shall have the right to disapprove any conveyance, transfer, or assignment of the CSXT Easement, or the grant of operating rights to any third party by CSXT pursuant to the CSXT Easement, provided Grantee will not unreasonably withhold, condition or delay its approval.

Deed at 2-3.

The Deed provides expansive definitions of the terms "Trackage," "Railroad Purposes" and "Rail Freight Service " Thus, CSXT is guaranteed "the right to use all Trackage

¹³ Unless otherwise indicated, the arguments below with respect to the Orlando Line should be considered to encompass the Aloma and DeLand Spurs as well.

on the Property for the exclusive provision of Rail Freight Service," which is defined as "[t]he transportation by rail of property and movable articles of every kind, character and description over the Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities . . ." Deed at 3.¹⁴

The CSXT Easement continues in perpetuity, until it "is abandoned or terminated, as provided in the CFOMA" Deed at 3. As discussed further below, the CFOMA grants CSXT sole control over the abandonment of rail freight service on the Orlando Line, and provides for termination of the CSXT Easement only if and to the extent that CSXT obtains and consummates STB abandonment authority for any portion of the Orlando Line.

In addition to the CSXT Easement, FDOT's acquisition of the Orlando Line pursuant to the Sale Contract also is specifically subject to the rights of Amtrak to operate over the Orlando Line pursuant to its existing agreement with CSXT. Sale Contract, § 1.01(a) As with the CSXT Easement, this provision is incorporated into the Deed as well Deed at 2 ("THE PROPERTY IS CONVEYED EXPRESSLY SUBJECT TO: . . (b) the rights of Amtrak under the Amtrak Agreement.").

2. CFOMA

The CFOMA is intended to govern the shared use of the Orlando Line by FDOT and CSXT (including CSXT's tenants, Amtrak and FCEN) in the period after FDOT completes the planned Phase One upgrading of the Orlando Line and starts to operate the SunRail commuter rail service (currently contemplated in 2011). The CFOMA provides that FDOT will be responsible for maintaining and dispatching the Orlando Line, and specifies the standards that

¹⁴ The only exception is for non-emergency detour movements of other railroads, which are separately governed by Section 3(m) of the CFOMA Deed at 3

will govern FDOT's performance of those activities. It also provides for daily passenger-only, freight-only and mixed passenger/freight operating windows on the Orlando Line, and incorporates a detailed Freight Service Plan outlining and accommodating all CSXT freight train movements¹⁵ The CFOMA was carefully crafted and negotiated by the parties to assure that both passenger and freight trains are handled efficiently on the Orlando Line, and to assure that CSXT possesses sufficient rights, of a permanent and exclusive nature, to provide common carrier freight service on the line. Specific operational aspects of the CFOMA are reviewed in the Discussion section of this motion, infra

The CFOMA reiterates the "mutual intention of the parties hereto that [FDOT] shall not obtain nor assume any common carrier obligation and that CSXT shall remain, and [FDOT] shall not become, the rail carrier subject to the Interstate Commerce Act [on the Orlando Line]." CFOMA at 1. It provides that "CSXT shall have the exclusive right to use the [Orlando Line] for the provision of Rail Freight Service thereon, and to operate CSXT's trains, locomotives, rail cars and rail equipment thereon with its own crews." CFOMA, § 1(a) And it summarizes FDOT's general obligation to assure that CSXT is able to fulfill its common carrier obligation on the Orlando Line:

It is understood by the parties hereto that, under its management, direction and control, [FDOT] shall furnish CSXT adequate facilities, including, without limitation, tracks and bridges, for (i) CSXT's provision of Rail Freight Service on the [Orlando Line] and (ii) CSXT's performance of its obligations to Amtrak under the Amtrak-CSXT Agreement or as provided by law, in at least substantially the same condition and in substantially the same

¹⁵ The Freight Service Plan reflects the planned capacity improvements for the A-Line (Orlando Line), as well as CSXT's intention to reroute several daily through trains from the A-Line onto the S-Line

manner as provided prior to the Commencement Date hereof (as modified by the Transition Agreement)

CFOMA, § 1(c) ¹⁶

The CFOMA is essentially perpetual in nature; it continues in effect unless and until CSXT obtains and consummates requisite STB abandonment authority to abandon rail freight service on the Orlando Line. CFOMA, §§ 11(a)(11)(1), 36(a). If STB authority is not required in the future (due to, for example, federal legislative changes), the CFOMA continues in effect until CSXT gives six months' prior written notice of its termination. CFOMA, § 36(a). FDOT has no unilateral ability to terminate the CFOMA, nor can it direct or compel CSXT to abandon its operations on the Orlando Line. CSXT retains sole discretion regarding abandonment or discontinuance of rail freight service, subject only to FDOT's right to invoke the Board's offer of financial assistance ("OFA") procedures and to be selected by CSXT if more than one offeror files an OFA. CFOMA, § 11.

The CFOMA provides that CSXT may not transfer the CSXT Easement to a non-affiliate without FDOT's prior written consent, but also provides that FDOT's consent cannot be unreasonably withheld, conditioned or delayed. CFOMA, § 37(a). CSXT also has a right of first refusal to repurchase the physical assets of the Orlando Line in the event FDOT ever sought to dispose of its interests to a party other than another Florida state or local governmental agency. CFOMA, § 38.

3. Transition Agreement

The Transition Agreement governs CSXT's use of the Orlando Line during the interim period (anticipated to be two years) after FDOT acquires the line but before SunRail

¹⁶ FDOT's particularized obligations under the CFOMA in support of this general standard are discussed further below

commuter operations begin, while FDOT completes construction on the Phase One double-tracking and other upgrading of the line. The Transition Agreement serves largely the same function as the CFOMA, and incorporates most of the CFOMA provisions. Transition Agreement, Tab 4, §1(a) (adopting Sections 4-15, 17-18, 20, 22-35 and 38-39 of CFOMA in their entirety, and Sections 3, 16, 19, 21 and 36-37 of CFOMA with modifications). Additional provisions are included to reflect the particular circumstances during the interim Phase One construction period.

FDOT will assume responsibility for dispatching the Orlando Line immediately upon transfer of ownership, but during the transition period it will contract with CSXT to provide the dispatching function on an independent contractor basis. Transition Agreement, § 4(c)(5), Appendix C.¹⁷ Close communication and coordination between FDOT, its construction contractors and CSXT will take place throughout the construction period. Transition Agreement, §§ 6(c), (d) and (f), 8. Any construction on the Orlando Line must be consistent with CSXT's standards regarding grades, degree of curvature, clearances, and braking distances. Transition Agreement, § 6(f).

Once CSXT upgrades to the S-Line are completed and the new Winter Haven terminal facility is open, the Transition Agreement provides that CSXT will divert approximately

¹⁷ The Transition Agreement and its Appendix C (the "Dispatching Services Agreement") provided that CSXT would temporarily create a separate "Central Florida Dispatcher Desk" to handle the dispatching function on the Orlando Line during the transition. It now appears that creation of an entirely separate dispatching desk may not occur immediately upon closing. That refinement will not affect dispatching on the line or otherwise change the nature of the accommodations that will be in place to protect freight service during the interim construction period.

8-9 daily trains from the Orlando Line (A-Line) to the S-Line.¹⁸ Transition Agreement, § 7. These diversions will facilitate construction activity on the Orlando Line, and free up capacity for the shared freight/passenger use of the Orlando Line once the SunRail commuter system is operating

The Transition Agreement provides for periodic work curfews on the Orlando Line during the construction period, subject to extensive notification requirements to CSXT, FCEN and Amtrak and approval at monthly work plan coordination meetings between FDOT, CSXT and the state's contractors. Transition Agreement, § 4(c)(7)-(9) Daily curfews can extend up to six hours during the daylight period, while a limited number of extended curfews will occur generally on weekends Other work zones on the Orlando Line are limited in both number (three at any one time) and length (seven miles) Transition Agreement, § 4(c)(7)(iii).

Amtrak trains will continue to operate during daily work curfews Transition Agreement, § 4(c)(7)(ii). If, beyond the trains discussed above, CSXT is required to divert additional trains to the S-Line as a result of FDOT construction curfews on the Orlando Line, FDOT will reimburse CSXT for the incremental cost of such diversions. Transition Agreement, § 5(f) Certain financial penalties are imposed if curfews extend beyond their scheduled duration, or if CSXT trains are not timely allowed through other work zones. Transition Agreement, § 10(b).

While significant, the double-tracking project that FDOT will undertake on the Orlando Line is not unlike other major line improvements that Class I railroads have performed

¹⁸ Two daily intermodal trains in each direction, daily autorack and coal trains in each direction, and a four-day per week flyash train in each direction The intermodal and autorack trains are through trains that will be entirely removed from the Orlando Line upon their diversion to the S-Line The coal and flyash trains are destined to a point on the south end of the Orlando Line, after their diversion to the S-Line, they will access the Orlando Line from the south and travel a short, 14-mile segment of the line to destination.

(and are performing) on busy main-line routes across the nation. As in those instances, the provisions of the Transition Agreement assure that freight train service will continue with minimal disruption during the construction process. Ultimately, the enhanced capacity of the Orlando Line -- the result of both FDOT's upgrade of that line and CSXT's diversion of trains to the S-Line -- will be more than adequate to accommodate the shared use of the Orlando Line by freight, intercity passenger and commuter trains, and to maintain CSXT's ability to provide all required common carrier freight service on the line.

DISCUSSION

Ordinarily, the acquisition of an active rail line by a non-carrier, including a state or a state entity like FDOT, requires Board approval under 49 U.S.C. § 10901. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). A long line of cases beginning with the seminal Maine DOT decision, however, has held that Board authorization is not required where the common carrier rights and obligations that attach to a line of railroad will not be transferred with the line's physical assets. Maine DOT, 8 I.C.C.2d at 836-837; see, e.g., New Mexico Department of Transportation -- Acquisition Exemption -- Certain Assets of BNSF Railway Company, Finance Docket No. 34793 (STB served February 6, 2006 ("New Mexico DOT") at 2.

A basic requirement of such cases is that the selling freight railroad retain a permanent easement that permits it to continue to provide common carrier freight service. The Port of Seattle -- Acquisition Exemption -- Certain Assets of BNSF Railway Company, Finance Docket No. 35128 (STB served October 27, 2008) ("Port of Seattle") at 3. Beyond that, the relevant inquiry is whether the freight railroad has sufficient property and contract rights to conduct freight operations, and whether the line's new owner (usually a state agency like FDOT)

has the right or ability to materially or unreasonably interfere with the railroad's freight operations E.g., Metro Regional Transit Authority -- Acquisition Exemption -- CSX Transportation, Inc., Finance Docket No. 33838 (STB served October 10, 2003) ("Akron Metro") at 4, see New Jersey Transit -- Acq. Exempt. -- Certain Assets of Conrail, 4 S.T.B. 512, 514 (2000) ("NJT/Bordentown") (question is whether freight carrier "has retained a permanent easement and whether it has sufficient interest and control over the line to permit it to carry out its common carrier obligation ")

The Board recently summarized how Maine DOT and its progeny have been applied in the "shared use" context, where a state agency acquires a rail line that will be used both for continuing freight service and for new commuter or passenger transit service:

To balance the development of mass transit with the retention of freight rail service, the freight carrier need not necessarily retain full control. Instead, the Board examines in each case whether the agreements between the parties continue to give the freight carrier the ability to conduct its existing and reasonably foreseeable freight operations so that it can satisfy its common carrier obligation.

While the freight carrier must continue to have a permanent easement or its equivalent to provide freight service, the public agency acquiring the right-of-way and track may negotiate terms and conditions with the freight carrier necessary to provide reliable commuter service or protect the agency's investment so long as such terms and conditions do not unreasonably interfere with freight rail service. Thus, the easement or the operating agreement may restrict freight operations to specific parts of the day, provided that the window for exclusive freight operations is adequate to satisfy the service needs of freight shippers. Likewise, the public agency may assume responsibility for maintaining the line and dispatching freight operations if the operating procedures are reasonable and do not discriminate against freight service, and if the freight has the right to inspect and to request prompt repair of any track defects.

Maryland Transit Administration -- Petition for Declaratory Order, Finance Docket No. 34975 (STB served September 19, 2008) ("MTA II") at 4-5

FDOT's proposed acquisition of the Orlando Line satisfies all of the criteria of Maine DOT and its progeny. Indeed, the SunRail project is a model of how the shared-use development of existing rail freight corridors for commuter service should and can proceed. Capacity constraints -- the ability of freight and passenger operations to co-exist, with each able to perform its intended function without detracting from the other -- present a significant regulatory question for new commuter rail start-ups seeking to invoke Maine DOT. FDOT and CSXT have taken a forthright and comprehensive approach to the problem. FDOT will make significant capacity investments in the A-Line, while CSXT will cooperatively reroute certain freight trains from the A-Line to the parallel, freight-only and upgraded S-Line, thus freeing up capacity on the A-Line both for new SunRail commuter trains and for the CSXT, FCEN and Amtrak trains that remain. The improvements by FDOT and CSXT to the central Florida rail network benefit both passenger and freight service, and in particular assure that CSXT can continue to provide adequate common carrier rail freight service in the region. FDOT will not acquire any common carrier obligation as a result of its acquisition of the physical assets of the Orlando Line, and its notice of exemption in this docket should be dismissed.

1. General Provisions

CSXT will retain a permanent, exclusive easement to conduct rail freight operations on the Orlando Line, and the related protective provisions of the CFOMA will continue in place for as long as the easement exists. Deed, Tab 4; CFOMA, Tab 2, § 36(a). The easement terminates only if CSXT decides to abandon the Orlando Line for common carrier freight purposes, a decision that is within CSXT's sole discretion, subject to the Board's approval. CFOMA, § 11(a). This is not a case, then, where the freight easement is subject to periodic renewal at the state agency's choosing, or where the state agency has the ability to compel the

carrier's abandonment of freight service. Cf. Wisconsin Department of Transportation -- Petition for Declaratory Order, Finance Docket No. 34764 (STB served December 2, 2005) at 2; Southern Pac. Transp. Co. -- Aban. -- L.A. County, CA, 8 I.C.C.2d 495 (1992), recons. denied, 9 I C C 2d 385 (1993); see Sacramento-Placerville Transportation Corridor Joint Powers Authority -- Acquisition Exemption -- Certain Assets of Southern Pacific Transportation Company, Finance Docket No. 33046 (STB served October 28, 1996) ("Sacramento-Placerville") at 2 (no STB jurisdiction where public agency "has no power to require [carrier] to discontinuc or curtail its freight service on the line.").

FDOT has no right to conduct common carrier freight operations on the Orlando Line, nor to admit any other party for that purpose CFOMA, § 1(a) ("CSXT shall have the exclusive right to use the [Orlando Line] for the provision of Rail Freight Service "), CFOMA, § 8(a) (FDOT's right to use the Orlando Line and to grant rights to others "shall not be used to permit any form of Rail Freight Service on the [Orlando Line] without CSXT's prior written consent.") CSXT has the exclusive right to "enter into contracts, agreements, lease and licenses . . with shippers and receivers of freight and others pertaining to the provision of Rail Freight Service on the [Orlando Line] " CFOMA, § 8(e) It is the explicit mutual intention of the parties that FDOT "shall not obtain nor assume any common carrier obligation [on the Orlando Line] " CFOMA at 1 Because FDOT will not hold itself out as a common carrier on the Orlando Line and will have neither the right nor ability to provide rail freight service on the line, its acquisition of the Orlando Line does not involve a transfer of a common carrier obligation and is not subject to the Board's jurisdiction. Central Puget Sound Regional Transit Authority -- Acquisition Exemption -- BNSF Railway Company, Finance Docket No. 34747 (STB served November 18, 2005) at 2, Metro-North Commuter Railroad Company --

Acquisition and Operation Exemption -- Line of Norfolk Southern Railway Company and Pennsylvania Lines LLC, Finance Docket No. 34293 (STB served May 13, 2003) ("Metro North") at 2, 3

CSXT may, with FDOT's consent, transfer the CSXT Easement to another carrier, or admit new third-party rail carriers to the Orlando Line.¹⁹ CFOMA, §§ 8(e), 37(a). In each instance, FDOT's consent cannot be unreasonably withheld, conditioned or delayed Id The Board has explained that "[i]t is not uncommon for a public entity . . . that seeks to acquire the physical assets of a rail line to use or preserve for rail freight and commuter service [] to play a role in the subsequent assignment of the freight easement " Port of Seattle at 4 Particularly given the restriction against unreasonable uses of FDOT's consent power, these contractual provisions do not unreasonably interfere with CSXT's ability to fulfill its common carrier obligation on the Orlando Line

2 Operating Windows

The CFOMA provides for three types of operating windows on the Orlando Line

1) a passenger-only window from 5:00 am to 10:00 am daily and again from 3:00 pm to 10:00 pm daily; 2) a freight-only window from 12:00 midnight to 5:00 am daily, and 3) a mixed passenger/freight window from 10:00 am to 3:00 pm daily and again from 10:00 pm to 12:00 midnight daily CFOMA, § 3(i)²⁰ Major track and signal work would occur only in the

¹⁹ The existing rights of FCEN and Amtrak, pursuant to their agreements with CSXT, to use the Orlando Line are specifically recognized elsewhere in the FDOT-CSXT agreements. See infra at 20.

²⁰ The six daily Amtrak trains that traverse all or a part of the Orlando Line are each scheduled through Orlando during the exclusive passenger window or the mixed passenger/freight window. In the rare instance that a late Amtrak train arrived during the exclusive freight window, it would be accommodated in accordance with the CSXT-Amtrak agreement (or a subsequent FDOT-Amtrak agreement). CFOMA, § 3(i).

passenger and mixed passenger/freight windows, while ordinary maintenance and inspection functions will be spread over all windows. CFOMA, § 3(i)(4). Specific provision is made for operating outside of the normal operating windows in extraordinary circumstances where necessary to assure the provision of adequate freight service CFOMA, § 3(i) [pp 13-14]

Thus, under the CFOMA, freight train operations will be permitted for 12 hours out of every 24 hour period, and for five hours every day when no potentially conflicting commuter train movements are occurring. As discussed above, such freight trains will operate on a significantly upgraded and double-tracked Orlando Line. As also discussed above, a substantial number of existing through CSXT trains (approximately 8-9 per day) that operate over the Orlando Line will be rerouted to the improved freight-only S Line. As a result, the Orlando Line will have greater capacity while handling fewer freight trains, and the exclusive freight window and mixed passenger/freight window will be more than adequate to accommodate the primarily local CSXT freight train service that will remain on the Orlando Line.

FDOT and CSXT have prepared a detailed CFCRT Freight Service Plan - Revision 5 (the "Freight Service Plan") that outlines operating patterns and schedules for CSXT (and FCEN) freight trains that will operate on the Orlando Line. The Freight Service Plan is attached as Exhibit 1 to the CFOMA, and is incorporated into the CFOMA CFOMA, § 3(i)(2). The Freight Service Plan cannot be changed without the mutual consent of the parties, who are also directed to review the plan annually to determine whether revisions are needed to accommodate local rail customer requirements or traffic growth. Id

The Freight Service Plan was developed through extensive consultation between FDOT and CSXT, as well as through expert operational modeling of current and prospective

Orlando Line operations by an outside consulting firm. See Verified Statement of F William Lipfert, Jr, formerly of SYSTRA Consulting, attached hereto as Attachment A ("Lipfert V S ") As Mr. Lipfert explains, he used SYSTRA's proprietary "RAILSIM" software, actual CSXT data regarding road freight train operations and set-off, pick-up and switching requirements for local trains, and 95th percentile worst case scenarios for train length and engine horsepower to evaluate train occupancies on the Orlando Line and the operational feasibility of shared CSXT, Amtrak and SunRail commuter train movements in the corridor Lipfert V S at 2-3 The analysis was intentionally conservative, in order to assure operational flexibility, room for future traffic growth and adequate service should a large number of CSXT's freight customers require switching on the same day. Lipfert V.S. at 3. Potentially wide schedule variability for Amtrak trains was assumed as well. Id Based on information derived from these analyses and input from CSXT, the Freight Service Plan was revised several times, resulting in Revision 5 that is adopted as part of the CFOMA

Mr Lipfert concludes that:

the proposed high capacity configuration of the improved FDOT-owned [Orlando Line] will readily accommodate all planned CSXT local and road freight service, all existing Amtrak service and the proposed [SunRail] commuter service as well as provide available capacity for future growth of freight, commuter and intercity passenger service [on the Orlando Line]

Lipfert V S at 4 Indeed, during the 12:00 midnight-5:00 am exclusive freight window alone, the improved Orlando Line would have the capacity to handle up to three times the number of CSXT freight trains that are provided for in the Freight Service Plan in that window Lipfert V.S at 3-4 Mr. Lipfert's analysis confirms that the carefully crafted Freight Service Plan, FDOT's significant commitment of resources to the infrastructure of the Orlando Line, and CSXT's planned diversion of certain through freight trains to the S-Line will allow rail freight

service on the Orlando Line to continue without undue interference from FDOT's planned SunRail commuter service

CSXT, which has been intimately involved in the planning and designing of the SunRail commuter project for several years, concurs that the exclusive freight and shared passenger/freight operating windows on the Orlando Line will be sufficient to meet the needs of its local freight customers and to fulfill its common carrier obligations on the line. Verified Statement of John M. Gibson, Jr., CSXT Vice President - Operations Research and Planning, attached hereto as Attachment B ("Gibson V.S.")

The Freight Service Plan specifically accounts for the existing interchange operations of FCEN on the Orlando Line, and FCEN's right to utilize the Orlando Line is memorialized in the transactional documents. CFOMA, Exhibit 1 at 6 (describing operating pattern for Train Z915 FCEN), Transition Agreement, § 11(a)(3) (recognizing "that FCEN's right to use the [Orlando Line] for Rail Freight Service is by virtue of its agreement with CSXT to use the CSXT Easement for Rail Freight Service" and that "FCEN's provision of Rail Freight Service is pursuant to CSXT's rights and obligation as a common carrier regulated by the STB . . ."). Similarly, the rights of Amtrak to utilize the Orlando Line under its existing agreement with CSXT are specifically reserved in the Deed conveying the property to FDOT. Deed at 2, see also Contract for Sale, § 1.01(a) (sale is subject to "the rights of Amtrak under the Amtrak Agreement"), CFOMA, § 1(a) (Orlando Line shall be used for the conduct of, inter alia, Intercity Rail Passenger Service). Amtrak trains will be accommodated and given priority in accordance with the Amtrak-CSXT agreement, CFOMA, § 3(i)(5),²¹ and as indicated above Amtrak's trains

²¹ The CFOMA contemplates that FDOT and Amtrak will eventually enter into a separate agreement governing Amtrak's operations on the Orlando Line. CFOMA, § 3(i)

have been included in all modeling and operational planning for the Orlando Line Lipfert V.S. at 2-3. FDOT and CSXT expect no adverse effects on Amtrak or FCEN train operations. See Gibson V.S. at 4²²

The Board has consistently held that segregated or preferential operating windows for passenger and freight service are acceptable where the windows available for freight operations are adequate to satisfy the service needs of freight shippers MTA II at 5, Washington County, OR -- Acquisition Exemption -- Certain Assets of Union Pacific Railroad Company, Finance Docket No 34810 (STB served April 11, 2007) at 3 (noting benefits for freight service from planned public improvements to rail line and new publicly-funded rail yard); New Mexico DOT at 2 (preferential operating windows not prohibited where carrier retains ability to provide freight service and "Amtrak service [is] provided in accordance with statutory and contractual standards."); Akron Metro at 4; NJT/Bordentown, 4 S.T.B. at 515 Here, the parties have provided for the rerouting of through trains to another CSXT line and have developed detailed and feasible operating plans for the CSXT freight service that will remain on the Orlando Line. Shared use of the Orlando Line for freight and passenger service will not unduly restrict CSXT in the provision of rail freight service, and does not result in any transfer of common carrier rights or obligations to FDOT

The SunRail commuter project has received considerable notice and media coverage in the Orlando area, and CSXT is currently in the process of contacting shippers on the Orlando Line directly to assure that they are informed of the proposed transaction A copy of this motion to dismiss, the accompanying appendix to this motion and the related notice of

²² FDOT and Amtrak have entered into a memorandum of understanding which covers, among other things, how Amtrak trains will be accommodated during the construction phase on the Orlando Line See also n. 26, infra A copy of this motion to dismiss and the related notice of exemption are being served on Amtrak and FCEN.

exemption is being served on all such shippers. FDOT will provide written certification to the Board upon completion of service.

3 Maintenance

The CFOMA provides that FDOT will be responsible for track maintenance on the Orlando Line after FDOT acquires the line from CSXT. CFOMA, § 4. FDOT is required to maintain the mainline tracks of the Orlando Line to FRA Class 4 standards,²³ and to maintain all tracks, bridges, signals and right-of-way in accordance with CSXT's geometry standards, the Manual for Railway Engineering of the American Railway Engineering Maintenance of Way Association ("AREMA"), best generally accepted industry standards and all applicable FRA track and signal standards. CFOMA, § 4(b) Train speeds on the Orlando Line cannot be lowered without CSXT's consent. CFOMA, § 4(c). CSXT has the right to inspect the Orlando Line to assure FDOT's compliance with the CFOMA maintenance obligations and to require that FDOT perform any necessary repairs. In the unlikely event FDOT fails to fulfill its maintenance obligations, CSXT may do so at FDOT's expense CFOMA, § 4(e)

The Board has found that similar maintenance arrangements did not result in transfer of common carrier rights or obligations to the purchasing governmental agency. Maryland Transit Administration -- Petition for Declaratory Order, Finance Docket No 34975 (STB served October 9, 2007) ("MTA I") at 6; Akron Metro at 3; Sacramento-Placerville at 2; see also Los Angeles County Transportation Commission -- Petition for Exemption -- Acquisition from Union Pacific Railroad Company, Finance Docket No 34374 (STB served July

²³ FRA Class 4 track standards allow operation of freight trains at speeds up to 60 miles per hour, and passenger trains at speeds up to 80 miles per hour. 49 C F R. § 213.9(a) Current top speeds on the Orlando Line are 60 miles per hour for freight trains and 79 miles per hour for passenger trains

23, 1996) ("LACTC/UP") at 3 (needs of passenger service give agency added incentive to fulfill track maintenance obligation).

4. Dispatching

Under the CFOMA, FDOT will be responsible for dispatching of all trains on the Orlando Line. CFOMA, § 3(a) FDOT will initially contract with CSXT to perform this function on FDOT's behalf; upon initiation of SunRail commuter service, after upgrades to the Orlando Line are completed, FDOT will have its own dispatching center. See Transition Agreement, § 4(c)(1)-(5) and Appendix C. In both phases, trains will be dispatched "without prejudice or partiality to any party and in such manner, as will afford the economical and efficient manner of movement of all trains." CFOMA, § 3(i). Specific dispatching protocols for train movements during the mixed passenger/freight operating window will be mutually agreed to by the parties. CFOMA, § 3(i)(2).

Under these circumstances and standards, the vesting of dispatching control in FDOT does not make FDOT a common carrier or unduly impair CSXT's common carrier rights and obligations on the Orlando Line. MTA 1 at 6; New Mexico DOT at 2; Metro North at 2. The Board has explained that.

Dispatching control has less importance in its own right than it has as a means of enforcing the service priorities accorded under the operating agreement. If the operating agreement considered as a whole and the circumstances surrounding it are not likely to impair freight service, the passenger operator's control over dispatching will not by itself create such an obstacle, because the latter merely implements the former

LACTC/UP at 3. As discussed above, the Freight Service Plan, planned infrastructure improvements and other contractual provisions governing operations on the Orlando Line assure

that CSXT will continue to be able to provide adequate freight service to local shippers. FDOT's control over dispatching does not diminish those capabilities

5 Spur Tracks and Improvements

The CFOMA provides that FDOT may request that CSXT remove unused sidetracks on the Orlando Line, but only where 1) no rail freight service has been provided on the sidetrack for a period of thirty consecutive months, and 2) CSXT has contacted the shipper and determined that future use of the sidetrack for rail freight purposes is not reasonably foreseeable. CFOMA, § 11(d) ²⁴ CSXT may construct additional sidetracks or other improvements on the Orlando Line, in consultation and agreement with FDOT and with reasonable conditions that FDOT may request. CFOMA, § 8(f) The FDOT approval process, however, may not be used to unreasonably interfere with CSXT's ability to meet future freight service demands.

It is understood by the parties hereto that the purpose of the aforesaid approval process is to ensure that any work performed on the [Orlando Line] is done in a manner consistent with [FDOT's] reasonably foreseeable use(s) for the [Orlando Line], [and] that the approval process specified herein shall not be used to unreasonably prohibit CSXT's development of railroad freight business on the [Orlando Line].

CFOMA, § 8(f)

For its part, any improvements to the Orlando Line undertaken by FDOT for commuter passenger purposes "shall not unreasonably interfere with CSXT's provision of Rail Freight Service or Amtrak's provision of Intercity Rail Passenger Service on the [Orlando Line] as contemplated in Section 1(a) of [the CFOMA] or CSXT's operations on the CSXT Easement . . ." CFOMA, § 5(a); see also CFOMA, § 8(d) (specifying clearances that must be maintained along the Orlando Line, including at SunRail station platform locations); Transition

²⁴ The Transition Agreement has a similar provision Transition Agreement, § 11(b)(3)

Agreement, § 6(f) (FDOT construction must be consistent with CSXT standards for grade, degree of curvature, clearances and braking distance).

These contractual rights and provisions reasonably protect CSXI's interest in providing rail freight service, and assure that FDOT will not have the ability to unduly restrict or impair CSXT's fulfillment of its common carrier obligation on the Orlando Line. Cf. MTA II at 4 (contractual provision for seeking abandonment of line with no freight operations for sixty consecutive months "would not seem inconsistent with any freight rail service needs.");²⁵ Metro North at 2-3

6 Transition Period

During the interim period after FDOT acquires the Orlando Line but before SunRail commuter service begins, the Transition Agreement will assure that CSXT, Amtrak and FCEN operations are not unreasonably impaired during the improvement and double-tracking of the Orlando Line. Consistent with Board precedent that passenger-related construction is not an unreasonable interference with the freight carrier's service obligations where satisfactory alternative arrangements are put in place, the Transition Agreement provides for the rerouting of certain CSXT trains to the S-Line and specifies the procedures and protections that will accompany construction on the Orlando Line and related work curfews Cf. MTA II at 7, Utah Transit Authority -- Acquisition Exemption -- Union Pacific Railroad Company, Finance Docket No. 35008 (STB served July 23, 2007) ("UTA") at 6.²⁶ CSXT concurs that its interests during

²⁵ Here, unlike in MTA, there are no provisions that require CSXT to seek abandonment of any portion of the Orlando Line for non-use. Abandonment decisions are left solely to CSXT's discretion. The relevant provisions of the CFOMA relate only to the removal of unused spur tracks, an action not subject to the Board's authority. 49 U.S.C. § 10906.

²⁶ In its memorandum of understanding with Amtrak, FDOT has agreed to assume all costs associated with busing Amtrak passenger around the Orlando Line during the relatively few

the interim construction period are adequately protected by the Transition Agreement. Gibson V.S. at 4.

Considering all of the agreements and circumstances outlined above, and in accordance with the Board's long-standing line of Maine DOT precedent, the Board should find that FDOT's acquisition of the Orlando Line from CSXT will not transfer any common carrier rights or obligations to FDOT nor make FDOT a common carrier, and that CSXT will retain sufficient property and contractual rights in the Orlando Line to conduct existing and reasonably foreseeable freight operations so as to satisfy its common carrier obligation

EXPEDITED CONSIDERATION

FDOT respectfully requests expedited consideration of this motion to dismiss, and asks that a Board decision be issued to allow timely closing in escrow of FDOT's acquisition of the Orlando Line by June 30, 2009. FDOT will not use federal funds to acquire the Orlando Line; however, federal funding through the FTA Section 3509 New Starts Program is being utilized for the design and construction of the SunRail commuter system. The FTA has advised FDOT that it will not initiate its final processes to approve a full funding grant agreement in 2009 unless the Orlando Line purchase from CSXT is completed in escrow by no later than June 30.²⁷ Failure to complete the FTA federal funding process in 2009 will delay implementation of the SunRail project for at least another year and potentially indefinitely.


extended work curfews that will require Amtrak train annulments. See MTA II at 7 (passenger-related construction not an unreasonable interference where transit agency makes satisfactory arrangements for alternative service).

²⁷ The escrow arrangement is being utilized to satisfy the requirements of the FTA funding process, while protecting FDOT's interests until federal funding is approved. Actual completion of the Orlando Line property transfer would likely take place in the early fall. A jurisdictional determination by the Board is needed before the June 30 escrow closing can take place.

As indicated above, federal environmental review of the SunRail commuter project has been substantially completed, and FTA has approved the project to enter the Final Design phase. Certain design contracts for the project have been let, and FDOT is prepared to start construction this fall, with commuter service beginning in 2011. In light of these circumstances, and to accommodate the requirements of another federal agency, it is reasonable for the Board to expedite this matter and issue a decision by June 29, 2009. That decisional timeline is consistent with the Board's action in other similar cases. E.g., New Mexico DOT (2 months); UTA (3 months), Central Puget Sound (3 months), Metro North (2 months).

WHEREFORE, FDOT respectfully requests that the Board dismiss FDOT's concurrently-filed notice of exemption in this docket as not proposing a transaction within the Board's jurisdiction.

Respectfully submitted,

By 

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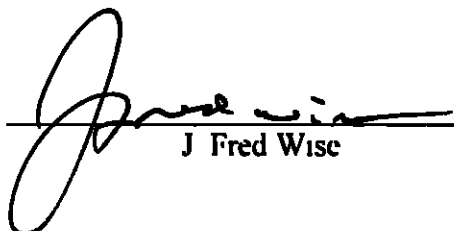
**ATTORNEYS FOR FLORIDA
DEPARTMENT OF TRANSPORTATION**

Dated: April 2, 2009


VERIFICATION

State of Florida)
) ss
County of Leon)

J Fred Wise, being duly sworn, deposes and says that he is State Rail Manager of the Florida Department of Transportation, that he has read the foregoing Motion to Dismiss and knows the facts asserted therein, and that the same are true as stated


J Fred Wise

SUBSCRIBED AND SWORN TO
before me this 1st day of April, 2009
Affiant personally known and took an oath


Notary Public

My Commission expires



**VERIFIED STATEMENT
OF
F. WILLIAM LIPFERT, JR.**

My name is F. William Lipfert, Jr. I am Practice Manager for Operations Planning and Simulation for LTK Engineering Services. For over 23 years I was employed by SYSTRA Consulting ("SYSTRA"), a worldwide rail operations planning, engineering and construction management firm with recognized expertise in the application of rail operations simulation technology to rail planning, construction and engineering projects. While at SYSTRA, I served as Project Manager for SYSTRA in conducting the operations planning and line capacity analysis for the Central Florida Commuter Rail Transportation ("CFCRT") project of the Florida Department of Transportation ("FDOT"). That project involves the proposed purchase by FDOT of 61.5 miles of the "A" Line of CSX Transportation, Inc. ("CSXT") between DeLand and Poinciana, Florida (the "Corridor"), upgrading and improvement of the rail facilities in the Corridor (including double-tracking, crossovers and a new signaling/dispatching system) and initiation of commuter service over the line in addition to continuing CSXT freight and Amtrak intercity passenger service.

I have more than 25 years of experience in capital improvement programming for rail lines and rail corridors, including mixed passenger/freight corridors. To facilitate such analyses, I developed computer rail simulation models for evaluating new and existing rail corridors, service plans, train capacity and strategies for optimizing signal system design and rail operations. I have been involved in more than 50 projects worldwide, including projects for almost every major U.S. commuter rail system, involving application of simulation technology to model traffic flows and rail line capacity. A copy of my resume, which includes a brief summary of some of the projects I have been involved in, is attached.

J

To perform operations planning/line capacity analyses, SYSTRA developed simulation databases for commuter rail operations where commuter traffic shares track with freight traffic. SYSTRA's proprietary RAILSIM computer model enables rail planners to quantify operational performance of both passenger and freight operations in a shared corridor.

In 2005, SYSTRA, part of the consulting team advising FDOT on the CFCRT project, was tasked with identifying the infrastructure that would be required on the Corridor to reliably support commuter, intercity passenger and freight service, both now and in the future.

FDOT plans to improve the line following purchase from CSXT from a generally single track railroad with passing sidings to a generally double-track railroad with universal 45 mph crossovers approximately every five miles and a new high-capacity, four-aspect bi-directional signal system on both tracks. Because of structural, environmental and community considerations, some short sections of single track will remain in the proposed Corridor track configuration. CSXT plans to divert or reroute certain existing road freight trains (either wholly or partially) from the Corridor to CSXT's parallel, freight-only "S" Line, including intermodal and automotive trains that will operate to a new terminal facility being developed off of the Corridor. As part of the operations planning process, I personally observed the existing rail facilities in the Corridor and current CSXT freight and Amtrak operations in the area. I personally reviewed the planned improvements with CSXT and Amtrak personnel, as well as with engineering specialists of FDOT's consulting team.

Working in conjunction with CSXT Operations Planning personnel and CSXT's own consultant CANAC, we developed the CFCRT Freight Service Plan ("Freight Service Plan") for the Corridor. The Freight Service Plan utilized actual data from CSXT to identify local set-off, pick-up and switching requirements and road freight service using current "A" line

operations through the Corridor as a starting point and then accounting for the train diversions to the “S” line and the relocation of Taft Yard terminal functions.

To confirm the feasibility of the proposed Freight Service Plan, we used SYSTRA’s RAILSIM software to model over-the-road travel times of CSXT trains using 90th percentile (longest) train lengths and 10th percentile (lowest) horsepower-to-ton ratios to ensure conservatism in the results. We then evaluated these train occupancies, coupled with similar RAILSIM output for the four daily (two each way) Amtrak trains operating over the entire Corridor and the two daily (one each way) Amtrak Auto Trains operating on the Corridor north of Sanford, Florida, along with the proposed commuter rail service to evaluate the feasibility of such operations over a 24-hour weekday period. In general, the plan called for a level of activity more intense than the projections for a typical day in order to ensure operational flexibility, room for growth and CSXT’s ability to serve its freight customers should a very large percentage require switching on the same day. For the analysis, Amtrak trains were assumed to have a high degree of schedule variability, both in terms of potential enroute delays and long-term operational constraints that might result in significant schedule shifts over time.

Once we had a basic service plan, additional analysis was performed to ensure that future capacity remained for freight and intercity passenger train growth. For example, at one point in the analysis, at the request of FDOT, we performed a “capacity saturation analysis” that sought to confirm the capacity for CSXT to operate additional trains – above and beyond those identified in the then-current service plan – during off-peak times. Even with the single track constraints of the proposed track configuration and local freight switching requirements, the analysis found that between midnight and 5:00 a.m. (which later became part of the exclusive freight period under the Central Florida Operating and Management Agreement between CSXT

and FDOT (“CFOMA”), CSXT, under that analysis, was to be operating 9 trains on the Corridor, but had available capacity to operate as many as 27 trains during those five hours. Though the service plan did not contemplate anywhere near that number of freight trains on the Corridor – nor would a good service plan expect to operate reliably at “saturation capacity” – the analysis did reflect the full capacity utilization of the largely double-track configuration of the improved line under FDOT ownership with high-capacity, four aspect, bi-directional signaling on both tracks and frequent crossovers. The analysis confirmed the availability of capacity on the improved Corridor to accommodate future growth in freight traffic.

The service plan was then reviewed by CSXT Operations Planning personnel and CSXT’s consultant and adjustments were made to optimize the plan. The CFCRT Freight Service Plan – Revision 5 that resulted was adopted by CSXT and FDOT in October, 2006. I understand that it formed the basis for CFOMA and is attached to and incorporated into that agreement.

Based on the RAILSIM computer model results, the work that went into developing and refining the Freight Service Plan and confirmed by my more than 25 years of experience in operations analysis, I am highly confident that the proposed high-capacity configuration of the improved FDOT-owned Corridor will readily accommodate all planned CSXT local and road freight service, all existing Amtrak service and the proposed commuter service as well as provide available capacity for future growth of freight, commuter and intercity passenger service in the Corridor.

EDUCATION

BA, Engineering Science, Dartmouth College, 1982
Graduate Courses, Transportation, and Thayer School of Engineering

SUMMARY OF QUALIFICATIONS

Mr. Lipfert has 24 years of experience in planning, operations analysis, design, and construction of commuter railroad, light rail, rapid transit, and freight rail systems. He has developed computer simulation models to evaluate new rail corridors and service plans, assessed existing train capacity, and developed strategies for optimizing signal system design and rail operations. Mr. Lipfert has also developed and applied operations simulation and passenger flow models to new vehicle procurements, station reconfiguration, line, and interlocking improvement projects, and trained dozens of rail personnel to use these tools. He has also staged major rail construction programs and implemented new control systems, including documentation, certification, and training dispatchers and maintainers.

WORK EXPERIENCE

Ulster County NY Advance Train Detection Project, Kingston, New York (2007) – Project Manager for this initiative to improve County-wide real-time information regarding grade crossing occupancy and predicted occupancy by freight trains. The purpose of the project is to provide Ulster County Emergency Responders (fire, police, ambulance) with information on which CSX West Shore Line crossings are blocked by freight trains (moving or stopped) and which crossings are about to be blocked in the next 5 to 20 minute timeframe. This will allow 911 Call Center dispatchers to guide responders to alternative routes, and could also be used for school and public transit buses. The County experiences over 40 long CSX freight train movements per day on a largely single track line, “meets” between trains in downtown Kingston can block crossings for 30 minutes or more.

MTA Long Island Rail Road PN-PE Traction Power Load Study, New York, New York (2004-2006) – Task Leader for Infrastructure/Operations Database Development for this major simulation and electrical network analysis of the busiest commuter rail network in North America, with more than 1000 daily train movements. Mr. Lipfert is responsible for the SYSTRA Team’s development of the LIRR infrastructure database, including track, signals, signal control lines, interlockings, and speeds. He is also responsible for the development of LIRR operations data in the model, including train consists, routing, schedules and dwell times. Both 2004 and 2020 LIRR simulation models have been developed, with the 2020 model reflecting the MTA/LIRR East Side Access Project, the addition of a third Main Line track between Queens Village and Hicksville, and the addition of a second Main Line track between Farmingdale and Ronkonkoma.

TTC Analytical Support for Implementation of a Speed Control System, Toronto, Ontario (2002-2006) – Mr. Lipfert is the Project manager for this speed control system project. SYSTRA has been providing the Toronto Transit Commission with integrated simulation tools for its rapid transit system since 1992. In 2001, the TTC initiated a Speed Control System project, using transponders to communicate the status of signals and speed restrictions (both temporary and permanent) to trains. SYSTRA analyzed safety factors and the minimum supportable headway for each signal location in the TTC system. This involved developing a synthesized database of all required speed restrictions outside signal system safe braking distance requirements. It also required the analysis and updated definition of the worst case train performance characteristics for flying speed and worst-

case braking curves — and subsequent definition of the worst-case train performance in responding to enforced civil speed restrictions. SYSTRA also performed 24-hour simulations, using its RAILSIM Simulation Software Suite, of the recommended Civil Speed Enforcement System configuration for the entire TTC Subway network, based on a current (updated) operating plan. SYSTRA's analysis of the simulation results quantified the benefits of the speed control system in terms of travel times and throughput (capacity).

LIRR Main Line Corridor Improvements Project Draft Environmental Impact Statement, Queens Village to Hicksville, NY (2004-2005) – Mr. Lipfert is the task manager, rail operations, for the potential addition of a third main track to the LIRR Main Line between Queens and Divide Interlockings. The third main track will support enhanced reverse peak service, opening markets not served today on the Oyster Bay Branch, Port Jefferson Branch and Main Line. Mr. Lipfert is responsible for identifying the rail operations implications of alternative track and station configurations, for developing no build and build future LIRR operating plans and for employing SYSTRA's RAILSIM® Simulation Software Suite to evaluate trade-offs in capacity, reliability, travel time, and grade crossing down time of the alternatives evaluated as part of the DEIS.

Florida Department of Transportation Central Florida CRT Environmental Assessment, Orlando, Florida (2005) – Mr. Lipfert was the project manager leading SYSTRA's evaluation of the required level of track infrastructure to support the addition of high-frequency commuter rail operations over alignment that already supported mixed freight and Amtrak passenger traffic in Central Florida. SYSTRA used its RAILSIM Simulation Software Suite for the analysis.

Lower Manhattan Commuter and Airport Access Alternatives Analysis, Lower Manhattan Development Corp New York, NY (2003-2004) – Mr. Lipfert was the task manager, rail operations, for this assessment of the feasibility and regional benefits of creating more direct rail transit connections between Lower Manhattan and the Long Island Rail Road system and John F. Kennedy International Airport (JFK). Working as part of the joint venture that was retained to perform the alternatives analysis in six months, SYSTRA worked with the historic collaboration of the Lower Manhattan Development Corporation, the Metropolitan Transportation Authority, the Port Authority of New York and New Jersey and the New York City Economic Development Corporation. Mr. Lipfert led the analysis of rail capacity for JFK and Long Island commuter-focused services, evaluating a new East River crossing as well as the use of an existing NYCT river crossing. SYSTRA used its RAILSIM® Network Simulator for the task, since the alternative involved an operational interface with a complex network of subway lines through a capacity-constrained tunnel.

NJ TRANSIT ARC, New York, NY (2004-2006) – Mr. Lipfert is the senior rail operations analyst responsible for operations analysis for the project, which will bring a new two-track rail tunnel under the Hudson River to Midtown Manhattan. Mr. Lipfert is working with NJT and Amtrak to optimize associated infrastructure investments in New Jersey, including additional tracks at Secaucus Junction Station and a track connection from the Main, Bergen and Pascack Valley lines on the station's lower level. The project also includes complex connections to the existing Penn Station New York infrastructure, as well as a new stub-ended station in the vicinity of 34th Street in Manhattan.

Amtrak/MARC/NJ TRANSIT/SEPTA Energy Management Capacity/Usage Study, Philadelphia, PA (2004-2005) – Mr. Lipfert was project manager responsible for simulation of Northeast Corridor operations within Amtrak's 25 Hz territory. This included the corridor between Sunnyside Yard, Penn Station New York, and Washington,



DC, as well as several NJT and SEPTA branches. The project included comprehensive modeling of the four railroads' rolling stock using RAILSIM® v7, including simulation of train performance, propulsion system efficiency and regenerative braking capabilities. Working with a Steering Committee from the railroads and Delaware DOT, which funds SEPTA service in that state, Mr. Lipfert managed the modeling of 2002, 2004, and 2009 operations.

Metro-North Traction Power Study, New York, NY (2003-2005) — Mr. Lipfert was the deputy project manager responsible for this major RAILSIM® v7 implementation, which supports analysis of the Metro-North DC and AC traction power systems. Mr. Lipfert managed the implementation of the RAILSIM® Load Flow Analyzer and the application of this software to identify optimal strategic investments to ensure adequate power supply and distribution throughout the Metro-North network. The DC analysis included the entire electrified portions of the Hudson and Harlem Lines, as well as the Grand Central Terminal area and lower portion of the New Haven Line. The AC analysis included the New Haven Line between New Rochelle, NY and New Haven, CT, as well as the New Canaan Branch. Mr. Lipfert also managed a related assignment for Connecticut DOT, the DC Territory Rate Analysis, which applied the RAILSIM® results to determine a fair division of usage and peak-based power costs between Metro-North and CDOT.

Amtrak/CPR/CSX/Metro-North NYSDOT Hudson Line Corridor Transportation Plan, New York (2003-2004) — Mr. Lipfert was the rail operations task manager responsible for simulation of the 160-mile Hudson Line Corridor between New York, NY and Schenectady, NY. The RAILSIM® v7 simulations included an existing calibration model of Amtrak, Metro-North and freight operations and a 2022 no build scenario, as well as three future capital improvement scenarios. The capital improvements include new mainline tracks, turnback locations, high-capacity signaling, Albany-Rensselaer Station expansion and interlocking reconfiguration. Each scenario has over 300 daily train movements, with 2022 scenarios including expanded Metro-North, Amtrak and freight train service, including many midday freight movements via the Corridor and the Oak Point Link to Harlem River Yard. The project resulted in a 20-year transportation plan for the corridor, including improvements to be undertaken and funded by each of the four benefiting railroads.

Singapore Land Transport Authority Rail Systems Simulator, Singapore (2003-2004) — Project Manager responsible for implementation of RAILSIM® v7 at the LTA, operator of three rapid transit lines in Singapore. The LTA lines include both fixed block and moving block train control systems, with RAILSIM® enhanced to support accurate network simulation of CBTC. Mr. Lipfert managed the on-site training effort, which included the RAILSIM® Editor, Network Simulator and Load Flow Analyzer.

Delaware Valley Regional Planning Commission Regional Rail Improvement Study, Philadelphia, Pennsylvania (2001-2002) — Mr. Lipfert was the task manager responsible for operations analysis of the SEPTA R5 line from Center City to Lansdale and Doylestown, and R3 line as part of a DVRPC-sponsored inter-agency study. The study's purpose was to improve trip times, making the R5 and R3 services more attractive to discretionary passengers. Mr. Lipfert managed the application of the RAILSIM Train Performance Calculator to the study, simulating 27 alternative capital improvement strategies for R5 and 11 for R3. These included rolling stock, track, grade crossing, service pattern and dispatching improvements.

Port of Long Beach Rail Operations Simulation Modeling, Long beach and Los Angeles, (2001-2002) — Project Manager for the development of the rail network simulation



model of the main running tracks of the Port of Long Beach rail network, including UP and BNSF main tracks to Dolores and Watson Yards. This includes all existing POB interlockings, yard receiving tracks, yard departure tracks and other relevant trackage. Using data developed for the Alameda Corridor studies, Mr. Lipfert managed the creation of a 24-hour "day in the life of the Port of Long Beach" operations database. This reflects all rail movements which utilize the modeled trackage, including transfer runs on those portions of the BNSF and UP trackage included in the model. SYSTRA then modified the existing Task 1 model to reflect projected future freight train volumes, the full implementation of the Alameda Corridor and proposed "mainline" and "branchline" rail improvements. Future operating volumes which are consistent with previous traffic studies developed for the Alameda Corridor Project were implemented in the simulation. The three future scenarios represent the years 2005, 2010 and 2020. Each scenario reflects both increased operating volumes and successively more extensive infrastructure improvements/port expansion (such as the Pier T development and the Pier 400 Proposed Container Terminal).

New York City Transit Lexington Avenue and Queens Boulevard Line Simulations, New York (2001) – Mr. Lipfert was SYSTRA's project manager for the RAILSIM network simulation to determine the feasibility of retaining various levels of G-Line on the congested Queens Boulevard line. These simulations evaluated alternative operating plans for NYCT's 63rd Street line connection, including operating two or three services on the Queens Boulevard Line local tracks. The project team worked with NYCT's Office of Management and Budget to develop evaluation metrics for the simulation results, including travel time, lateness, throughput and terminal turn times.

Florida Department of Transportation, Orlando (2000) – Mr. Lipfert was the project manager leading SYSTRA's evaluation of the required level of track infrastructure to support the addition of high-frequency commuter rail operations over alignment that already supported mixed freight and Amtrak passenger traffic in Central Florida. SYSTRA used its RAILSIM Simulation Software Suite for the analysis.

Metro-North Railroad New York State Geographic Information System Database, New York (2000-2002) – Mr. Lipfert was project manager for this major RAILSIM v7 database development effort using CAD-based aerial survey documents. The project created a detailed database of the Metro-North system within New York State, including the Hudson, Harlem and New Haven Lines, capable of supporting analysis of train trip times, signal safe braking distances and minimum supportable headways. SYSTRA also used the database to update and automate the generation of Metro-North C&S signal block plan and routing drawings.

Amtrak/LIRR/NJ Transit Tri-Venture Penn Station New York Simulation Analysis, New York (1999-2002) – Mr. Lipfert was the principal-in-charge for this comprehensive computer simulation study of existing Penn Station capacity and the adequacy of the physical plant to handle growing volumes of Amtrak and commuter rail traffic. He provided oversight and quality control in the development of a RAILSIM simulation model spanning Penn Station's 21 station tracks, four interlockings and three approaches. The model included operations on the Northeast Corridor to Trenton and beyond. On the LIRR, the model included operations through the East River Tunnel and on the Main Line to Jamaica and beyond. More than 900 daily trains were included, with simulation of Mail & Express movements and yard manipulations. Mr. Lipfert managed Tri-Venture simulation efforts for future operational and infrastructure improvements, to assess the best strategy in accommodating increasing demand for Penn Station service.



Société de Transport de la Communauté Urbaine de Montréal (STCUM) Line 2 Extension Operations Simulation, Montreal, Quebec (2001) — Mr. Lipfert was project manager for a RAILSIM network simulation analysis of STCUM's Line 2, focusing on configuration alternatives for the planned extension from Henri-Bourassa to Montmorency. RAILSIM was used to model eight alternative future scenarios with increased ridership, each representing different terminal configurations and yard access configurations at Henri-Bourassa. Other variables in the future scenarios included forecast transfers from commuter rail operations at Concorde as well as the possibility of a Line 5 extension, which would add more Line 2 riders via the transfer station of Jean-Talon. The Project included licensing of RAILSIM to STCUM, with software installation, training, and user support at its offices.

Metropolitan Transit Development Board/San Diego Trolley Operations and Electrical Network Simulation, San Diego, California (1999-2001) — Mr. Lipfert was project manager for this RAILSIM Simulation Software Suite application. The project included development of a simulation model capturing San Diego Trolley's operations, including infrastructure, rolling stock, ridership and schedules. The model included the entire two-line San Diego network. In addition, the RAILSIM Load Flow Analyzer was applied to the San Diego network, providing the capability to analyze system electrical capacities, power demand, power costs, effects of regenerative braking and many other electric network issues.

MBTA Green Line Operations Improvements Study, Boston, Massachusetts (1999-2001) — Mr. Lipfert was project manager for this study of the Green Line Central Subway, which included benchmarking of existing operating capacity, evaluation of infrastructure improvements to boost capacity and RAILSIM operations simulation of multiple alternatives. The study also included a detailed 40+ person "Day in the Life of the Green Line" data collection effort as well as a simulation analysis of possible three-car LRT vehicle operation on the Green Line.

Lower Manhattan Access Alternatives Study, New York (1998-2001) — Mr. Lipfert was the task manager for operations analysis of numerous TSM and build alternatives for this study to improve transportation to Lower Manhattan. Mr. Lipfert was responsible for evaluating operational improvements of the NYCT "A" Division Lexington Avenue Line and assessing the benefits of new passenger information systems, train control and new generation vehicle technologies as applicable to NYCT operations. Mr. Lipfert was also responsible for development of a RAILSIM² simulation model of "A" Division operations in the Bronx, Manhattan, and Brooklyn.

Staten Island Railway Signaling Project, Staten Island, New York (1997-2001) — Mr. Lipfert was the task manager responsible for capacity analysis and signal system block layout. Mr. Lipfert was responsible for alignment data collection using Global Positioning System (GPS) Satellite data and development of synthesized rail alignment data. He was also responsible for developing an optimized signal block layout for bi-directional operation using power frequency track circuits, cab signaling and wayside signals only at interlockings.

Portland MAX Airport Extension Safe Braking Distance and Headway Analysis, Portland, Oregon (1999-2000) — Mr. Lipfert was the project manager for a RAILSIM-based analysis of the signal system design for the Portland Red Line extension to the Portland International Airport. Safe braking for this inductive trip stop-based system was analyzed based on both one and two car train lengths. The analysis included timetable and maximum attainable speeds. Based on the analysis, SYSTRA recommended relocation of

several signals and cut sections. The analysis also included simulation of signal clearing times and single track occupancy times to ensure conformance with scheduled headway requirements.

Massachusetts Bay Transportation Authority Blue Line Safe Braking and Capacity Analysis, Boston, Massachusetts (1999-2000) — Mr. Lipfert was the project manager responsible for providing a RAIL SIM Simulation Software Suite site license, training, and quality control review for this MBTA rapid transit application. RAIL SIM was used to evaluate the safe braking distance and headway implications of increasing Blue Line train lengths from four to six cars. The RAIL SIM Signal Designer application was used to evaluate site-specific signal and control line modifications necessary to provide sufficient safe braking distance and capacity at all locations on the line.

MTA JFK One-Seat Ride Study, New York (1999-2000) — Mr. Lipfert was the task manager responsible for all trip time and operating capacity analysis for this major feasibility study. Railroad and transit-based alternatives to provide a one seat (i.e. no transfers) ride from JFK Airport to Manhattan were studied, including 12 different railroad alignments and some 30 different transit alignments. Mr. Lipfert evaluated the benefits of a hypothetical Communications Based Train Control (CBTC) installation on the LIRR Main Line as a way of securing sufficient operating "slots" for the JFK service. He has supervised the development of trip time analysis for all of the Long Island Rail Road and New York City Transit alternatives.

LIRR East Side Access Project, New York (1998-2000) — Mr. Lipfert was the task manager for the SYSTRA team developing simulation models of the proposed connection of the Long Island Rail Road to Grand Central Terminal. The team analyzed the operating plan proposed for the connection, including alternate track and signal configurations. The simulation analyses included evaluation of related LIRR infrastructure improvements, including reconfiguration of the Jamaica Station Complex. The team also developed a proposed Year 2020 Operating Plan for the Long Island Rail Road. This operating plan is comprised of over 1,000 trains per weekday operating on over 700 miles of track and through over 100 stations.

MTA RAILSIM Enterprise License, New York (1998-2000) — Mr. Lipfert was the project manager for the supply of the Metropolitan Transportation Authority and its operating subsidiaries (New York City Transit, Long Island Rail Road, Metro-North Railroad and Staten Island Railway) with the latest version of the RAIL SIM Simulation Software Suite. The project included a comprehensive training program, user support, software updates and upgrades.

Metro-North Railroad Brewster to Wassaic Resignaling Project, New York (1998-1999) — Mr. Lipfert was the task manager for the signal block layout design of a new four-aspect cab/no way side train control system from Brewster North to Wassaic on Metro-North's diesel-powered Upper Harlem Line. The Brewster North to Dover Plains segment was formerly operated under Manual Block operating rules whereas the segment from Dover Plains to Wassaic was abandoned and has been completely rebuilt by MNR. The work included application of fixed-block and timer-based code change points, as well as the design of AFO grade crossing starts. Safe braking distance analysis for the block layout was based on a comprehensive GPS-based survey, which was also developed by SYSTRA.

DRPA PATCO Reverse Signaling System, Lindenwold, New Jersey (1999) — Mr. Lipfert was the Rail Operations Analyst for this major resignaling project. Mr. Lipfert employed the RAIL SIM Simulation Software Suite to design and analyze the PATCO reverse



signaling system signal control line design between Lindenwold and PATCO's Philadelphia terminal at 16th & Locust. In some cases, control lines in the normal direction were modified to provide enhanced throughput. The simulation verified that PATCO's two-zone (express and local) operating plan was supported by the new train control design. Mr. Lipfert used RAILSIM's minimum supportable headway analysis functions to verify that capacity for additional service is available with the new SYSTRA design.

WMATA F-Line and Network-Wide Rail Operations Simulation Project, Washington, D.C. (1998-1999) — Mr. Lipfert was the project manager to provide the RAILSIM® Simulation Software Suite to WMATA, including software licensing, training, user support and database development for the seven route-miles of the Outer-F Line (Anacostia to Branch Avenue Stations). After WMATA reviewed the power of the RAILSIM software for operations analysis, he led the follow-on work for additional 97 route-miles, creating a single database for the entire full build 104 route-mile network. He was responsible for developing a simulation database which would allow WMATA to use RAILSIM to perform complete 24-hour network simulations of system operations and to perform what-if analyses regarding potential changes in operations and infrastructure. Infrastructure changes include additional pocket tracks, additional or lengthened tail tracks, new emergency crossover locations, and new connecting tracks between existing lines as well as line extensions beyond the currently authorized 104 route-mile network.

Shanghai Metro Line 3 Train Control Design and Simulation, Shanghai, China (1998) — Mr. Lipfert was the project manager for the design of a new digital track circuit application for Shanghai Metro's Line 3 for a major worldwide train control supplier. The design featured 90-second headways on the trunk portion of the line, which accommodated Line 11 Metro service. After the development of a complete train control design, the RAILSIM Network Simulator modeled a variety of Line 3 and Line 11 operating strategies, confirming that a practical system throughput of 40 trains per hour could be achieved.

Kowloon-Canton Railway Corporation West Rail Simulation, Hong Kong (1997) — Mr. Lipfert was the project manager responsible for analysis of a train control system proposed by a major worldwide supplier to KCR for its West Rail Project. The analysis included development of a rail alignment database, generation of an optimized block layout for the proposed profile-based digital track circuit architecture and a 24-hour network simulation. The proposed train traffic included over 1,100 daily trains, including commuter EMUs, double-stack container trains and conventional heavyweight through trains. The network simulation confirmed a practical headway of 120 seconds, and a variety of failure scenarios verified that the train control system could recover from system disruptions.

Port Authority of Allegheny County Rail System Simulator Project, Pittsburgh, Pennsylvania (1995-1996) — Mr. Lipfert was the project manager for system-wide rail operations and signal system simulation system for the PATransit network in Pittsburgh. The simulation system was used to plan restoration of PCC lines and their conversion to full LRT standards, as well as evaluate signal system safety, grade crossing congestion, on-time performance and power consumption. Mr. Lipfert led the database development, software development, training, and user support elements, and supervised the acceptance testing and system turnover activities. He also managed the calibration of the simulation software to real-world conditions, including station dwells, point-to-point run times, and signal clearing times. PATransit procured an agency-wide site license for RAILSIM as part of the project.



MBTA Fall River-New Bedford Study, Boston, Massachusetts (1996) - Mr. Lippert was the task leader responsible for the team that used RAILSIM to quantify the impact on Northeast Corridor operations of adding Fall River-New Bedford trains

Amtrak New Haven to Boston Electrification Project - Signal Block Layout (1995-1996) — Mr. Lippert was the task manager for New Haven to Boston automated signal block layout for 150-mph operation on the Shore Line. Mr. Lippert managed the data collection of grades, curves, mileposts, platforms and speed restrictions, and the incorporation of this data into the RAILSIM Graphic Editor. An end-to-end signal block layout was developed, using the Amtrak nine-aspect cab signaling system and limited way side signaling. Mr. Lippert supervised the training of Amtrak staff in the use of the RAILSIM Signal Designer software and follow-up user support.

SEPTA Railroad Operations Computer Simulation System, Philadelphia, Pennsylvania (1994-1996) — Mr. Lippert was the project manager for the development of a computer operations model of the entire SEPTA Regional Rail Division, including the Amtrak lines between Harrisburg, Wilmington and Trenton. The project included extensive links to other SEPTA projects, including the Trapeze Scheduling System, the Automated Train Dispatching System and SEPTA's Geographic Information Systems (GIS). The entire SEPTA simulation model was based on the SYSTRA Rail Operations Simulation System, RAILSIM, and was developed in GIS (State Plane) coordinates. The project included development of a new train control design for the critical SEPTA Main Line between Wayne Junction and Glenside, as well as analysis of operational improvements throughout the Railroad Division.

SEPTA Market Frankford Subway-Elevated Automatic Train Control Project, Philadelphia, Pennsylvania (1994-1996) — Mr. Lippert was the task manager responsible for the automated generation of the ATC block layout for both tracks in both directions, as well as computer simulation of existing and future operations. Mr. Lippert applied the RAILSIM Signal Design software to the project, which permitted the project to save almost two months in the block layout process. Once the future block layouts were complete, Mr. Lippert used the RAILSIM network simulation to evaluate future travel times, normal capacity and "crush" capacity.

Los Angeles County Metropolitan Transportation Authority, Metro Red Line Operations Simulation, Los Angeles, California (1995) — Mr. Lippert was the project manager for developing a RAILSIM simulation database to test the validity of a proposed operating plan for Segment 1, Union Station to West Lake/McArthur Park and Segment 2, Red Line extensions to Hollywood & Vine and to Wilshire & Western. The project scope also included analyzing several failure scenarios involving tracks out of service and recommending alternate operating plans.

NJ TRANSIT General Site Planning Services Project, Hoboken Terminal Complex Operations Simulation Study, Hoboken, New Jersey (1994-1995) — Mr. Lippert was the project manager for the development of a comprehensive SYSTRA RAILSIM® simulation model of the entire Hoboken Terminal Complex, including terminal tracks, yard tracks, shops, East End Interlocking, West End Interlocking and Connections to the Morris & Essex and Main Lines. A complete 24-hour day in the life of Hoboken Terminal was simulated, including the extremely complex interlocking route logic and train control system. The simulation database and software, which was licensed to NJ TRANSIT Rail Service Planning, was used to evaluate capacity limitations of the existing physical plant and opportunities for improvement.



NJ TRANSIT Burlington-Gloucester Major Investment Study, New Jersey (1994-1995) — Mr. Lipfert was the task manager responsible for the PATCO Trunk Line Capacity Analysis, including application of the SYSTRA Rail Operations Simulation System, RAILSIM®, to the PATCO Lindenwold Line. Mr. Lipfert managed the operational impact analysis of adding one or two branches to the PATCO system to serve Burlington and Gloucester counties. The capacity analysis also included the simulation of light rail alternatives and their impact on PATCO operations through passenger transfers in Camden. Mr. Lipfert developed conceptual designs for capacity improvements, including new train control and terminal expansion at 16th and Locust Streets in downtown Philadelphia.

NJ TRANSIT Newark International Airport EWR Rail Station and Northeast Corridor Connection Project, Newark, New Jersey (1993-1995) — Mr. Lipfert was the operations specialist responsible for evaluating alternative track configurations on the Northeast Corridor and the development of operating plans for the proposed Airport Rail Station. Mr. Lipfert worked with NJ TRANSIT and Amtrak to develop an integrated Year 2010 operating plan for the Corridor, including service at the Airport Station, the Secaucus Transfer Station and the Kearny Connection. He applied computer simulation to existing operations and future operations with the Airport Station to determine the optimal track configurations at Union, Elmora, Lane, and Hunter Interlockings on the corridor.

Metra B-12 Interlocking Project, Franklin Park, Illinois (1993-1994) — Mr. Lipfert was the operations specialist responsible for simulating Metra commuter rail and freight operations at this major interlocking on the Metra Milwaukee District West Line. Using the results of the simulation, SYSTRA designed a new interlocking configuration and parallel connecting tracks between the West Line and the Wisconsin Central Main Line to support 41 route-miles of new commuter rail service. Using RAILSIM, Mr. Lipfert analyzed the operating benefits and liabilities of alternative trackwork configurations and signal block layouts at B-12.

RAILSIM Railroad Operations Simulation Application and Training for CSX Transportation, Jacksonville, Florida (1993) — Mr. Lipfert was the project manager for training of CSX Transportation, Engineering and Financial Analysis personnel in the use of RAILSIM, the SYSTRA Rail Simulation System. CSX used RAILSIM to analyze alternative operating strategies and the benefits of new train control systems.

Amtrak North End Rail Improvement Project General Engineering Consultant, New York to Boston (1992-1993) — Mr. Lipfert was the task manager for operations analysis of this high-speed rail project, which resulted in 150 mph operation of Acela Express high speed train sets in the Amtrak-owned portion of this corridor between New Haven and Boston. Mr. Lipfert developed operating plans for the project's construction staging, including analysis of single tracking and time penalties associated with interlocking diverging moves.

TTC Operations Simulation and Signal Design Software, Toronto, Ontario, CANADA (1991-1993) — Mr. Lipfert was the project manager for the signal design software being developed for the Toronto Transit Commission, which supports the ambitious scope of its line extensions and the adoption of new train control technology. The signal design software automatically generates conventional wayside signal block layouts for a user-defined track network, including automatic signals, interlocking signals, insulated joints, cut sections, and train stops. In addition, the software supports user-defined Automatic Train Control (ATC) and Automatic Train Operation (ATO) block layout design. The TTC also used RAILSIM to simulate its entire rapid transit operation. RAILSIM graphically



shows every train on the system, the interaction between trains, and the status of every signal, switch, and trip stop throughout the system. A Train Performance Calculator was also integrated into the software package.

NJ TRANSIT Penn Station New York Access Project, Kearny Connection Simulation Study, New Jersey (1991-1992) — Mr. Lipfert was the project manager for the development and application of enhanced rail operations simulation software, including the development of random train arrival and station dwell capabilities. The simulation application included all Amtrak and NJ TRANSIT operations on the Northeast Corridor between Newark and New York, and the evaluation of Morris & Essex trains merging on the Corridor at the Kearny Connection as part of the engineering and operations planning effort for NJT's MidTown Direct service. Mr. Lipfert also supervised the six-week simulation-training course for NJ TRANSIT personnel.

Sacramento Regional Transit District Light Rail Transit Simulation System, Sacramento, California (1990-1992) — Mr. Lipfert was the project manager for the development of the SYSTRA rail simulation system, RAILSIM, and enhancements required for the SRTD light rail operation, including dynamic display of signal aspects, a simplified train headway data format, and modeling street traffic signal system pre-emption characteristics. He was also responsible for enhancing RAILSIM to include interactive implementation of failures, such as special equipment speed restrictions and extended station dwell times. The Sacramento application included the development of a track, signal, and operating plan database for the entire 18.3-mile starter line and support of SRTD personnel in the development of alternative Sunrise/Gold River and Antelope Extension configurations.

MBTA Green Line LRT Automatic Vehicle Identification System, Boston, Massachusetts (1990-1992) — Mr. Lipfert was the project manager for a turnkey design/build project for an Automatic Vehicle Identification (AVI) system that provided overall system control for the 27-mile Green Line light rail system. The project included 33 wayside communications locations where train times, routes, consists, and on-board vehicle conditions were monitored. The system also included a centralized control facility including dispatcher computer terminals and system overview panel, which were supported by a Digital Equipment Corporation MicroVAX computer. His responsibilities also included software certification, final system integration, and testing. He developed O&M documentation and training for MBTA staff, including vehicle operators, dispatchers, signal maintainers, and rolling stock maintenance personnel.

Metra Northwest Line, North Line and Clinton Street Interlocking Resignaling Projects, Chicago, Illinois (1991) — Mr. Lipfert was the operations analyst for the design of new signaling systems on the Metra-funded Union Pacific (formerly Chicago and Northwestern) commuter lines. On the Northwest Line, Mr. Lipfert evaluated alternative signal block layouts and operation on two tracks while the third is removed for bridge reconstruction. On the North Line, the optimal locations of universal interlockings to route traffic around bridge construction zones were identified and designed. At Clinton Street Interlocking, he developed the conceptual design of a new track layout, where four West Line tracks and four North Line tracks merge to become six tracks leading to the Chicago Passenger Terminal.

LIRR Timetable Audit, Jamaica, New York (1990) — Mr. Lipfert was the project manager for an intensive six-week audit of the schedules and operating plans of all 800 LIRR weekday trains. At the request of LIRR management, Mr. Lipfert worked with the railroad's Transportation Department in using the SYSTRA-developed Operations



Simulator for the audit. All trains delayed by conflicting movements, yard operations, and scheduled connections were identified, as were those with insufficient scheduled time.

GO Transit Commuter Rail Central Control Facility, Toronto, Ontario, Canada (1990) — Mr. Liptert was the operations/systems analyst for a feasibility study of a new commuter rail central control facility. He was responsible for all systems and hardware analysis including train information displays, the passenger information system, and the integrated management computer system.

BART Integrated Control System (ICS) Evaluation, Oakland, California (1989-1990) — Mr. Liptert was the project manager for the technical evaluation and recommendation of system improvements for BART's ICS Project, a new computerized control system that has been designed to supervise all train movements on the 71-mile system, in addition to controlling electrification and support systems, such as ventilation and fire protection equipment.

LIRR Jamaica Complex Improvement Project, Jamaica, New York (1988-1990) — Mr. Liptert was the deputy project manager - construction staging for the coordination of construction staging activities with the project's track, signal, electrification, and structural disciplines. He led a group of operations planners and signal system construction engineers as part of the complex construction planning. The project's staging effort, which required maintaining operations for more than 600 daily trains, was organized through a weekly coordination meeting, which Mr. Liptert chaired. He also performed numerous Jamaica operations analyses and was responsible for determining the overall capacity of the complex with extensive structural, track, and signal modifications.

LIRR West Side Yard, New York (1984-1985) — Mr. Liptert evaluated operational impacts of varying speed restrictions in the West Side Yard. Full 24-hour operations of yard speed (5 mph) and Penn Station speed (15 mph) limits were simulated to evaluate different FRA classifications of the signal system.

New York MTA Queens Subway Options Study, Queens, New York (1983-1984) — Mr. Liptert was the assistant project manager responsible for evaluating subway, bus, and commuter rail operating plans and associated costs for five transit alternatives that would use the new 63rd Street Subway Tunnel. He identified capacity constraints based on signaling systems, equipment limitations, and transit operational requirements with the designers of the preliminary track, yard, and station configurations. He also developed computer simulation models of commuter rail operations between the Nassau/Queens line and the East River Portal to evaluate the effect on Long Island Rail Road Jamaica Station operations of additional Queens Village and Valley Stream trains operating to a subway transfer station.

PRESENTATIONS/PUBLICATIONS:

"Development of a West Side Yard Operating Plan Using Computer Simulation" (with R K Umstadt), Transportation Research Board, Washington, DC, 1985

"Improvements to and Application of the Long Island Rail Road Operations Simulation System," American Public Transit Association, Vancouver, BC, 1990

"Optimizing New Rapid Transit Signal Block Designs for Capacity, Travel Time and Capital Cost," American Public Transit Association, Sacramento, California, 1994

"Commuter, Intercity and Freight Rail Operations Simulation and Capacity Analysis for the Philadelphia Metropolitan Region," American Public Transit Association, Commuter Rail Conference, Fort Lauderdale, Florida, April 1995

"Optimization of Capacity and Travel Time for the SEPTA Wayne Junction to Glenside Systems Improvement Project," IEEE Philadelphia Section, October 14, 1998

"Evaluation of Three-Car Operation and Dynamic Double Berthing to Improve the MBTA Green Line", American Public Transportation Association, Boston, MA, June 13, 2001

"The Role of Computer Modeling in Capital Program Optimization Case History of the Hudson Line Railroad Corridor Transportation Plan", Railway Age Conference on Computer Modeling for Rail Operations, Delray Beach, FL, February 26, 2004

VERIFICATION

F. William Lipfert, Jr., under penalty of perjury, declares and verifies that he is Practice Manager for Operations Planning and Simulation for LTK Engineering Services, that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated.


F William Lipfert, Jr.

Dated: April 2, 2009

**VERIFIED STATEMENT
OF
JOHN M. GIBSON, JR.**

My name is John M Gibson, Jr I am Vice President Operations Research and Planning for CSX Transportation, Inc. ("CSXT"). I have 26 years experience in the rail industry and have served in my current position since 2004 As Vice President Operations Research and Planning, my responsibilities include directing and overseeing traditional Operations Research functions, Operations Planning including the capacity capital budget, all passenger train operations including Amtrak, all joint facility agreements with other railroads and all passenger access and operating agreements.

CSXT is a Class I rail carrier operating 21,000 route miles of rail lines in 23 states east of the Mississippi River, the District of Columbia and the Canadian Provinces of Ontario and Quebec. Based in Jacksonville, Florida, CSXT is the largest railroad in the State of Florida operating a network of main lines and secondary lines serving all of the major population centers in the state, the Ports of Fernandina, Jacksonville, Manatee, Panama City, Pensacola and Tampa, and the heart of the state's agricultural and mining areas

CSXT currently owns and operates two parallel north-south main lines between Jacksonville and Lakeland/Auburndale, Florida: the former Atlantic Coast Line Railroad route or "A" line and the former Seaboard Air Line Railroad route or "S" Line located approximately 40 miles west of the "A" Line. A map showing both the "S" Line and the "A" Line and their proximity to each other is attached.

CSXT has reached agreement with the Florida Department of Transportation ("FDOT") to sell to FDOT a 61.5-mile portion of the "A" Line through downtown Orlando between DeLand and Poinciana, Florida (the "Corridor"). FDOT plans to improve the rail

facilities and institute commuter rail service on the Corridor. As part of its agreement with FDOT, CSXT will retain an exclusive perpetual freight easement on the Corridor and will continue to fulfill its common carrier obligations and provide freight service to all current and future local industries on the Corridor. FDOT will have no right to conduct common carrier freight operations on the Corridor, nor to admit any other party for that purpose. The parties' agreement makes clear that CSXT retains the common carrier obligation and that FDOT is not assuming any common carrier obligation. Following its purchase of the Corridor, FDOT, as owner, will be responsible for the dispatch and maintenance of the Corridor and provide the commuter service. During a transition period between the time of purchase and commencement of rail commuter passenger operations, during which period the rail commuter system is being constructed, FDOT has contracted with CSXT to provide dispatching over the Corridor.

FDOT plans to upgrade the Corridor to a largely double-track rail line with additional crossovers and new bi-directional signals. CSXT will divert or reroute approximately 8 to 9 existing road trains from the "A" Line to the parallel freight-only "S" Line. The diverted road trains consist of 2 daily intermodal trains and 2 daily auto rack trains that will operate to and from a new terminal facility and 2 intermodal trains that will operate to and from Tampa via the "S" Line instead of via the "A" Line. The rerouted road trains consist of 2 daily unit coal trains (1 inbound loaded train to Orlando Utilities Commission and 1 outbound empty train) and 2 bulk fly ash trains each of which operate approximately two days or less per week each (that operate to and from an electric power plant located south of Taft Yard) that will be rerouted via the "S" Line to Poinciana and over only approximately 14 miles of the Corridor from Poinciana on the south to Orlando Utilities Commission near Taft Yard.

I personally participated on behalf of CSXT in the negotiation of the Central Florida Operating and Management Agreement ("CFOMA") (that will govern operations, maintenance and dispatching of the Corridor once commuter service begins), the negotiation of the Transition Agreement (that will govern operations, maintenance and dispatching of the Corridor during the period between FDOT's purchase of the line and commencement of commuter service when the Corridor is being upgraded) and the development of the CFCRT Freight Service Plan for the Corridor. In CFOMA, the parties agreed to operate pursuant to three daily "operating windows" (i) exclusive passenger operations between 5:00am and 10:00am and between 3:00pm and 10:00pm, (ii) mixed passenger and freight operations between 10:00am and 3:00pm and between 10:00pm and midnight in accordance with the CFCRT Freight Service Plan; and (iii) exclusive freight operations between midnight and 5:00am with no limit on the number of freight trains. Thus, there are 12 hours each day in which CSXT freight trains can use the Corridor, and 5 of those 12 hours in which CSXT has exclusive use of the Corridor. The CFCRT Freight Service Plan – Revision 5 is based on the operating windows agreed to in the CFOMA. CFOMA also provides that Amtrak trains will be accommodated in accordance with the provisions of the existing CSXT-Amtrak Agreement (or a subsequently negotiated FDOT-Amtrak agreement), and that, in extraordinary circumstances, trains can operate outside their normal operating windows. There are no operating "windows" established in the Transition Agreement governing the period during which the Corridor will be upgraded because there will be no commuter trains during this period, but in the Transition Agreement the parties have worked out detailed provisions governing operating curfews, signal suspensions and work zones to assure that freight service requirements are accommodated during this period.

In addition to participating in the negotiation of the CFOMA and the Transition Agreement, I led the CSXT team that reviewed in detail the initial CFCRT Freight Service Plan and worked closely with FDOT and its consultants to refine and finalize it. I can state from my personal involvement in the process that each part of the CFCRT Freight Service Plan was developed through extensive consultation with CSXT and with CSXT's input and approval. The CFCRT Freight Service Plan -- Revision 5 that was ultimately agreed to by the parties is attached to and incorporated by reference into the CFOMA. Under the terms of the CFOMA, the CFCRT Freight Service Plan will be reviewed annually by the parties but cannot be changed without CSXT's approval.

Having reviewed FDOT's plans for the Corridor and having participated in the development of the CFOMA, the Transition Agreement, and the CFCRT Freight Service Plan, and based on my 26 years of experience in rail operations and operations planning, I am very confident that CSXT will be able to fully satisfy its common carrier freight obligations on the Corridor following FDOT's purchase and improvement of the Corridor and thereafter. The plan not only accommodates current CSXT freight service needs, but has additional capacity to accommodate future freight traffic growth. The two other current users of the line -- Amtrak, whose four daily intercity passenger trains will continue to operate over the entire Corridor and whose two daily Auto Trains will continue to operate over the Corridor north of Sanford, Florida, and the Florida Central Railroad, a short line railroad that will continue to operate over the Corridor for purposes of interchanging freight traffic with CSXT at Taft Yard -- will not be adversely affected. The transaction has had significant public exposure since the execution of the agreements and CSXT's expectation is that the proposed freight operating plan will maintain acceptable levels of service to customers.

CSXT does not anticipate that the sale of the Corridor to FDOT will have a significant impact on its employees. CSXT positions associated with track and signal maintenance will be eliminated on CSXT since it will no longer have maintenance responsibilities. CSXT expects, however, that its employees holding those jobs will be able to hold other positions on CSXT. Although not required to do so, CSXT offered to negotiate agreements with its unions representing potentially affected employees, which would provide New York Dock-type economic protective benefits to employees adversely affected by this transaction and other potential transactions with FDOT. CSXT reached such agreements with unions that represent the vast majority of employees who hold potentially affected positions, including the Brotherhood of Locomotive Engineers and Trainmen, United Transportation Union, Brotherhood of Maintenance of Way Employees, and Brotherhood of Railway Carmen.

The CFOMA, Transition Agreement and CFCRT Freight Service Plan that have resulted from the CSXT/FDOT negotiations collectively address safety, capacity, dispatch, maintenance, liability, and operating windows in a well reasoned thoughtful manner, accommodating the respective needs of all stakeholders in and users of the Corridor. CSXT believes that this transaction is a model of how these types of shared corridor transactions should be handled.

Exhibit 1

S-Line

A-Line

Atlantic Ocean

Gulf of Mexico

Major Highways

Geographical Features

Stations and Key Locations:

- Jacksonville
- Orlando
- Tampa
- Winter Haven
- DeLand
- Sebring
- Palmdale
- Ocala
- Winterwood
- Vero Beach
- Fort Pierce
- St. Cloud
- Titusville
- Melbourne
- Titusville
- Sebring
- Palmdale
- Ocala
- Winterwood
- Vero Beach
- Fort Pierce
- St. Cloud
- Titusville
- Melbourne

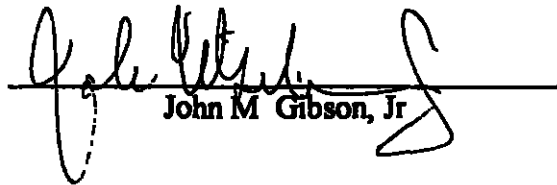
Operations Planning
November 30, 2007

**Operations Planning
November 30, 2007**

VERIFICATION

State of Florida)
)
County of Duval) SS

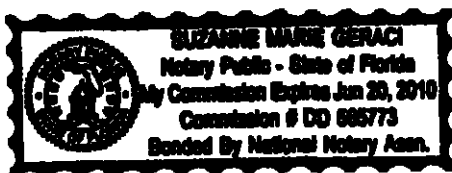
John M Gibson, Jr , being duly sworn, deposes and says that he is Vice President Operations Research and Planning for CSX Transportation, Inc , that he has read the foregoing statement and knows the facts asserted therein, and that the same are true as stated


John M Gibson, Jr

SUBSCRIBED AND SWORN TO
before me this 3rd day
of March, 2009


Notary Public

My Commission expires



CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of April, 2009, a copy of the foregoing **Motion of Florida Department of Transportation to Dismiss Notice of Exemption** and its accompanying **Appendix** was served by first-class mail, postage prepaid, upon:

Peter J Shudtz, Esq
Vice President - Federal Regulation and Washington Counsel
CSX Corporation
Suite 560, National Place
1331 Pennsylvania Avenue, N.W.
Washington, DC 20004

Jared I. Roberts, Esq.
Senior Associate General Counsel
National Railroad Passenger Corporation
60 Massachusetts Avenue, N E.
Washington, DC 20002

Mr. Bennett J. Biscan
Vice President and General Manager
Florida Central Railroad Company, Inc
P O Box 967
Plymouth, Florida 32768-0967

Hon. John Hugh "Buddy" Dyer, Jr
Chairman
Central Florida Commuter Rail Commission
133 Semoran Boulevard
Orlando, FL 32807

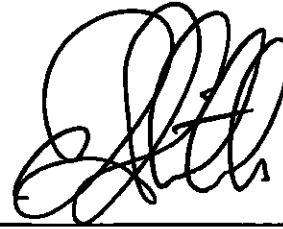
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1300 L Street, N W
Suite 1200
Washington, DC 20005

A handwritten signature in black ink, appearing to read 'T. Litwiler', positioned above a horizontal line.

Thomas J Litwiler

ORIGINAL

BEFORE THE
SURFACE TRANSPORTATION BOARD

224823

FINANCE DOCKET NO 35110

FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC

ENTERED
Office of Proceedings

APR - 3 2009

Part of
Public Record

**APPENDIX TO MOTION OF
FLORIDA DEPARTMENT OF TRANSPORTATION
TO DISMISS NOTICE OF EXEMPTION**

William C Sippel
Thomas J Litwiler
Fletcher & Sippel LLC
29 North Wacker Drive
Suite 920
Chicago, Illinois 60606-2832
(312) 252-1500

**ATTORNEYS FOR FLORIDA
DEPARTMENT OF TRANSPORTATION**

Dated: April 2, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NO 35110

**FLORIDA DEPARTMENT OF TRANSPORTATION
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF CSX TRANSPORTATION, INC.**

**APPENDIX TO MOTION OF
FLORIDA DEPARTMENT OF TRANSPORTATION
TO DISMISS NOTICE OF EXEMPTION**

- | | | |
|--------------|---|---|
| Tab 1 | - | Contract for Sale and Purchase, dated November 30, 2007, between State of Florida Department of Transportation and CSX Transportation, Inc |
| Tab 2 | - | Central Florida Operating and Management Agreement ("CFOMA"), dated November 30, 2007, between State of Florida Department of Transportation and CSX Transportation, Inc |
| Tab 3 | - | Transition Agreement, dated November 30, 2007, between State of Florida Department of Transportation and CSX Transportation, Inc |
| Tab 4 | - | Deed, including the CSXT Easement, Exhibit 4 to Contract for Sale and Purchase |

EXHIBIT 1

Execution Copy

**CONTRACT FOR
SALE AND PURCHASE**

**Between State of Florida Department
of Transportation and CSX Transportation, Inc**

**Pertaining to the Central Florida Rail Corridor, a Line of Railroad
Between Deland, Florida and Poinciana, Florida
and Related Properties**

Dated November 30, 2007

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List of Exhibits

- Exhibit 1 – General Map of Subject Property**
- Exhibit 2 – Description of Subject Property -- Not attached, to be finalized pursuant to Section 23**
- Exhibit 3 – Intangible Inventory -- Not attached, to be finalized pursuant to Section 23**
 - SP Intangibles**
 - EP Intangibles**
 - Transferred Joint Use Intangibles**
 - Retained Joint Use Intangibles**
- Exhibit 4 – Deed**
- Exhibit 5 – Excluded Property -- Not attached, to be finalized pursuant to Section 23**
- Exhibit 6 – Included Tangible Personal Property Inventory -- Not attached, to be finalized pursuant to Section 23**
- Exhibit 7 – Excluded Tangible Personal Property Inventory -- Not attached, to be finalized pursuant to Section 23**
- Exhibit 8 – Bill of Sale**
- Exhibit 9 – Transferred Intangibles -- Not attached, to be finalized pursuant to Section 23**
- Exhibit 10 – Assignment of Transferred Intangibles**
- Exhibit 11 – Memorandum of Assignment of Transferred Intangibles**
- Exhibit 12 – Joint Notification Letter of Transferred Intangibles**
- Exhibit 13 – Joint Use Agreement(s) -- Not attached, to be finalized pursuant to Section 23**
- Exhibit 14 – Aloma Spur and Deland Spur Option Agreement**
- Exhibit 15 – Memorandum of Aloma Spur and Deland Spur Option Agreement**
- Exhibit 16 – Opinion of CSXT'S Counsel**
- Exhibit 17 – Opinion of State's Counsel**
- Exhibit 18 – Outline of Environmental Agreement**
- Exhibit 19 – Legislation**
- Exhibit 20 – Party Wall Agreement -- Not attached, to be finalized pursuant to Section 23**
- Exhibit 21 – Demolition Agreement -- Not attached, to be finalized pursuant to Section 23.**

CONTRACT FOR SALE AND PURCHASE

THIS CONTRACT, made as of the 30th day of November, 2007, by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC , a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT")

WITNESSETH THAT

WHEREAS, CSXT has interests in certain properties including a line of railroad between Deland and Poinciana, FL over which rail freight and intercity rail passenger service are presently conducted (the "A-Line"), and

WHEREAS, pursuant to the Florida Transportation Code, Section 334.01, *et seq* , Florida Statutes, the State desires to acquire CSXT's interests in such properties and such line of railroad (as hereinafter more particularly described) for the purposes of accommodating public demand for commuter rail transportation, roadways and other public purposes including the continued provision of rail freight and intercity rail passenger service, and

WHEREAS, State believes it is entitled to condemn that portion of the A-Line necessary for the purpose of accommodating such need, and

WHEREAS, State and CSXT maintain their respective positions but elect not to endure a court challenge of the contested issue and have instead elected to transfer the properties described below upon threat of condemnation, and

WHEREAS, State and CSXT have agreed that State shall cooperate with CSXT in CSXT's accomplishing I R C Section 1031 exchange(s), and

WHEREAS, the parties desire that CSXT retain, and not transfer to State, a perpetual easement over the easement area as set forth in the Deed attached as Exhibit 4 hereto limited for the purpose of the exclusive provision of rail freight service subject to the rights of the National Railroad Passenger Corporation ("Amtrak") under the Agreement dated June 1, 1999, and all Central Florida Operating and

Management Agreement ("CFOMA") permitted supplements thereto, such agreement and supplements being between CSXT and Amtrak (collectively, the "Amtrak Agreement"), it being the intention of the parties that CSXT remain, and State not become, the rail carrier subject to the Interstate Commerce Act, the ICC Termination Act of 1995, the Railway Labor Act, or any other federal law as enacted or revised relating to the provision of railroad freight transportation on the properties subject to the CSXT Easement, and

WHEREAS, reserving all rights with respect to the contested issue of condemnation, CSXT will sell and State will acquire the involved properties and the parties hereto desire to provide for the continued operation, use and maintenance thereof, all upon the terms and conditions hereinafter set forth

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS

Section 1. Purchase and Sale.

1 01 Agreement of Sale/Lieu of Condemnation Upon the terms and subject to all of the conditions herein set forth and the performance by each of the parties hereto of their respective obligations hereunder, CSXT agrees, under threat of condemnation, to sell, transfer and convey to State on the Closing Date and State agrees in lieu of condemnation to accept and purchase from CSXT on the Closing Date

(a) All of CSXT's right, title and interest in and to the following land, real property, rights-of-way and associated property (i) that portion of CSXT's A-Line starting at Milepost A749 7 (Sta 39409 +00), at or near Deland, FL and ending at Milepost A814 1 (Sta 42718 +10), at or near Poinciana, FL, a distance of approximately 61 5 miles, and (ii) certain specified properties contiguous to such line, all as shown on Exhibit 1 hereto and as more specifically described in Exhibit 2 hereto (provided, however, the parties may, prior to Closing, by mutual agreement and subject to Section 7 of this Contract, adjust the property boundaries identified in such exhibits to alleviate or mitigate any title, survey, double tracking, and/or signal installation problems disclosed by the title documents, surveys,

utility documentation, or other due diligence materials), subject to (x) those rights, interests, contracts, agreements, leases, licenses and easements which are listed or described in Exhibit 3 hereto, (the "Intangible Inventory"), (y) the rights of Amtrak under the Amtrak Agreement and (z) a perpetual easement over the easement area therefor set forth in the Deed attached as Exhibit 4 hereto limited for the purpose of the exclusive provision of rail freight service to be retained by CSXT (hereinafter collectively referred to as the "CSXT Easement") as set forth in the deed appearing as Exhibit 4 hereto (the "Deed") and excluding and excepting those parcels, rights and interests listed or described on Exhibit 5 hereto (the "Excluded Property"), all of which are excluded or excepted from the sale, transfer and conveyance to State contemplated by this Contract,

(b) All of CSXT's right, title and interest in and to tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and other fixtures and improvements which are affixed, as of the Closing Date, to the real property shown on Exhibit 1 and described in Exhibit 2 hereto, but excepting any items of the kind described above which are on the properties listed or described in Exhibit 5 hereto, all of which are hereby reserved by CSXT and excepted from the sale, transfer and conveyance to State contemplated by this Contract,

(c) All of CSXT's right, title and interest in and to the items of tangible personal property (the "Included Tangible Personal Property") listed or described in Exhibit 6 hereto (the "Included Tangible Personal Property Inventory") accompanied by maintenance records, warranties and other pertinent records pertaining thereto to the extent available, but without any representation or warranty as to completeness, accuracy, assignability, or any other matter, but excluding the following items of tangible personal property that are or may be located on or in the Subject Property on the Closing Date: railroad rolling stock, locomotives, automobiles, trucks, automotive equipment, machinery (except as listed or described in Exhibit 6 hereto), office and computer equipment, radios and radio control equipment, furniture, tools, switch locks and keys, inventories, materials and supplies, as well as any other personal property which is not to be sold, transferred and conveyed to State under the provisions of

Sections 1 01(b) and 1 01(c) hereof and which is not affixed to the Subject Property on the Closing Date (the "Excluded Tangible Personal Property") listed in Exhibit 7 (the "Excluded Tangible Personal Property Inventory") Any tangible personal property located on the Subject Property on the Closing Date not listed in the Included Tangible Personal Property Inventory shall be deemed to be included in the Excluded Tangible Personal Property Inventory,

(d) All of CSXT's right, title and interest in and to the items of Transferred Intangibles listed on Exhibit 9 as provided in Section 7 08 of this Contract, and

(e) The Option Agreement, as defined in Section 3 hereof, from CSXT to State as to those certain spurs known as the Aloma Spur running to the Orlando/Sanford International Airport shown and designated as the Aloma Spur on Exhibit 1 hereto (the "Aloma Spur") and the Deland Spur running to downtown Deland shown and designated as the Deland Spur on Exhibit 1 hereto (the "Deland Spur")

The aforesaid properties, real and personal, which are to be sold, transferred and conveyed to State under this Contract are hereinafter collectively referred to as the "Subject Property "

1 02 Conveyance

The sale, transfer and conveyance to State of any interest of CSXT in the land, real property and fixtures under this Contract shall be made by Deed as set forth in Exhibit 4 hereto and shall be with the warranties set forth therein and subject to the matters set forth therein as well as the Permitted Exceptions as defined in Section 7 01 of this Contract, a counterpart of which shall be recorded in Volusia County, Seminole County, Orange County and Osceola County, Florida A portion of the Subject Property shall be conveyed subject to the terms of the Party Wall Agreement attached hereto as Exhibit 20 and incorporated by reference herein The sale, transfer and conveyance to State of any interest of CSXT in the tangible personal property under this Contract shall be evidenced by a Bill of Sale (the "Bill of Sale") as set forth in Exhibit 8 hereto, and shall be made without any express or implied warranty whatsoever, other than as otherwise expressly provided in this Contract and other matters set forth therein as well as the Permitted Exceptions The sale, transfer and conveyance to State of any interest of CSXT in the Transferred Intangibles listed on Exhibit 9 attached hereto as provided in Section 7.08 of this Contract,

shall be evidenced by an Assignment of Transferred Intangibles as set forth in Exhibit 10 hereto and the Memorandum of Assignment of Transferred Intangibles as set forth in Exhibit 11 hereto, both subject to the matters set forth therein as well as the Permitted Exceptions, with a counterpart of the Memorandum of Assignment of Transferred Intangibles to be recorded in Volusia County, Seminole County, Orange County and Osceola County, Florida. In addition, as to any Transferred Joint Use Intangibles, as listed on Exhibit 3 and provided for in Section 7.08 of this Contract, the Joint Use Agreement(s) shall be executed between CSXT and the State in form attached as Exhibit 13 hereto. Said Joint Use Agreement(s) shall also be applicable to the Retained Joint Use Intangibles listed in Exhibit 3 and shall be executed by CSXT and State at Closing. Other than warranties of title free and clear of all mortgages, deeds of trust, financing statements, judgment liens, materialmen liens and liens arising out of CSXT's employee pension obligations, the Deed, Bill of Sale, Assignment of Transferred Intangibles, Memorandum of Assignment of Transferred Intangibles and the Joint Use Agreement(s) each shall be made without any express or implied warranty whatsoever except as otherwise expressly provided therein or in this Contract. State acknowledges that CSXT may endeavor to have the Title Company insure over certain liens based upon CSXT's indemnification agreements with the Title Company. As to any matter which the Title Company agrees to delete from the Title Policy to be delivered at the Closing, State shall have no objection or right to object to such matter, and State will, as to any claim pertaining to any matter which the Title Company has agreed to insure over and upon any lienor or judgment creditor seeking to execute upon any portion of the Subject Property, first pursue the Title Company through litigation and/or arbitration, but to the extent any such claim remains unsatisfied after such litigation and/or arbitration is free from further appeal, State shall have recourse against CSXT. Any future uses or improvements on, under, through, above, across, or along the State Property shall be compatible with the existence and continuation of Rail Freight Service, Commuter Rail Service and Intercity Rail Passenger Service, and shall not unreasonably interfere with or unreasonably constrain continued Rail Freight, Commuter Rail Service or Intercity Rail Passenger Service.

Section 2. Purchase Price.

Subject to the terms and conditions of this Contract, and in consideration for the sale, transfer and conveyance of the Subject Property to State, State shall pay to CSXT the sum of One Hundred Fifty Million and no/100 Dollars (\$150,000,000 00) (hereinafter referred to as the "Purchase Price") for the Subject Property. The Purchase Price shall be paid on the Closing Date in cash or its equivalent in immediately available United States funds, subject to the withholding, if any, established in Section 14.02 of this Agreement.

Section 3. Option To Purchase Aloma and Deland Spurs.

At Closing, CSXT and State shall execute and deliver the Aloma Spur and Deland Spur Option Agreement attached hereto as Exhibit 14 (the "Option Agreement") and the Memorandum of Aloma Spur and Deland Spur Option Agreement attached hereto as Exhibit 15 with the latter to be recorded in the public records of Volusia and Seminole Counties, Florida.

Section 4. Statutory Limitations

Notwithstanding any other provision hereof, this Contract is subject to the provisions of Section 339.135 (6) (a), Florida Statutes, to wit:

"The department [Florida Department of Transportation], during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years, and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

Section 5. Federal Regulatory Matters.

5.01 STB Jurisdiction

State and CSXT shall take all reasonably necessary steps to secure the determination of the Surface Transportation Board ("STB") that it has no jurisdiction over the transaction contemplated in this Contract, or in any transaction contemplated in any Ancillary Agreement as defined in this Contract.

5 02 FRA Notification

State shall provide notification to the Federal Railroad Administration ("FRA") pursuant to 49 C F R § 213 5(c), if applicable, at least thirty (30) days prior to the Closing Date

Section 6. Closing.

6 01 Exchange of Documents

The Purchase Price, subject to the withholding, if any, established in Section 14 02 of this Agreement, Deed, Bill of Sale, Assignment of Transferred Intangibles, Memorandum of Assignment of Transferred Intangibles, Joint Use Agreement(s), Aloma Spur and Deland Spur Option Agreement, Memorandum of Aloma Spur and Deland Spur Option Agreement, Environmental Agreement, the Party Wall Agreement and the Opinions referenced herein shall be exchanged, together with all other deliverables under this Contract at a closing (the "Closing") to be held at the headquarters of CSXT in Jacksonville, FL or at such other location as the parties hereto may mutually agree upon. Subject to the right of termination expressly provided under Section 17 of this Contract, the Closing Date shall occur not later than June 30, 2009

6 02 Settlement Statement

At the Closing, the apportionments under Section 9 of this Contract between the parties shall be made and reflected on the Settlement Statement as charges or credits to each party, as appropriate

6 03 Allocation of Closing Costs

CSXT shall pay the cost and expense of (i) the Title Commitment and Title Policy including the premium for the Title Policy and all search, copy, printing and other charges of the Title Company with respect to said Title Commitment, Title Policy and the furnishing of copies of title documents required to be furnished herein, (ii) any documentary stamp taxes, interest, and penalties on the Deed, (iii) the attorneys' fees and consultant fees of CSXT and (iv) other costs of the transactions under this Contract and the Ancillary Agreements incurred by CSXT. State shall pay the cost and expense of (i) the Survey, as herein defined, (ii) recording counterparts of the Deed (exclusive of Documentary Stamp taxes thereon) and the Memorandum of Assignment of Transferred Intangibles in Volusia, Seminole, Orange

and Osceola counties, Florida, and the cost of recording the Memorandum of Aloma Spur and Deland Spur Option Agreement in Volusia and Seminole counties, Florida, (iii) the attorneys' fees and consultant fees of the State and (iv) other costs of the transactions under this Contract and the Ancillary Agreements incurred by State

Section 7. Instruments of Transfer and Conveyance.

7 01 Permitted Exceptions/Deed/Bill of Sale

At the Closing, in exchange for the Purchase Price, CSXT shall deliver to State CSXT's Deed and Bill of Sale subject to the following which are herein referred to as the "Permitted Exceptions"

(a) The exceptions, reservations, rights and privileges of CSXT set forth in this Contract, including, without limitation, the CSXT Easement,

(b) Building, Zoning, Subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations,

(c) Subject to the apportionment provisions of Section 9 herein, liens for ad valorem real and personal property and governmental assessments, both general and special, which may become due or payable on the Subject Property on or after the Closing Date excepting any assessed on the CSXT Easement which shall be the responsibility of CSXT,

(d) Reservations or exceptions whether or not of record, including, without limitation, reservations or exceptions of minerals or mineral rights, public utility and other easements, and easements, crossings, occupancies and rights-of-way, howsoever created,

(e) Encroachments or any other state of facts which might be revealed from an accurate survey, title search or personal inspection of the Subject Property,

(f) All other existing roads, streets, ways, alleys, party walls, privileges, rights, appurtenances and servitudes, howsoever created,

(g) Mortgage liens pertaining to the Subject Property which liens CSXT shall cause to be released, at no cost or expense to State within sixty (60) days of the recording date of the Deed,

(h) The matters set forth in Section 8 01 herein, and

(i) As to each of the Deed, Bill of Sale, Assignment of Transferred Intangibles, Memorandum of Assignment of Transferred Intangibles, Aloma Spur and Deland Spur Option Agreement, Memorandum of Aloma Spur and Deland Spur Option Agreement, and the Joint Use Agreement(s), the matters appearing in said documents

7 02 Additional Closing Documents

In addition, at the Closing, the parties shall execute and deliver the following

(a) A Settlement Statement signed by each party evidencing the Purchase Price, reserves or hold backs from the Purchase Price, the apportionments and the closing costs with the appropriate credits and charges to the parties,

(b) The Assignment of Transferred Intangibles attached as Exhibit 10,

(c) Memorandum of Assignment of Transferred Intangibles attached as Exhibit 11, a counterpart of which is to be recorded in Volusia, Seminole, Orange and Osceola Counties, Florida,

(d) The Aloma Spur and Deland Spur Option Agreement attached as Exhibit 14,

(e) Memorandum of Aloma Spur and Deland Spur Option Agreement attached as Exhibit 15, a counterpart of which is to be recorded in Volusia and Seminole Counties Florida,

(f) The Joint Use Agreement(s) attached as Exhibit 13,

(g) The Environmental Agreement attached as Exhibit 18,

(h) CSXT shall deliver to State an opinion of CSXT's counsel substantially in the form of Exhibit 16 hereto, and

(i) State shall deliver to CSXT an opinion of State's counsel substantially in the form of Exhibit 17 hereto

In rendering the foregoing opinions in Section 7 02 (h) and (i), such counsel may rely as to factual matters upon certificates or other documents furnished by officers, officials and other counsel of the respective parties, and upon such other documents and data as such officers, officials and counsel may deem appropriate for their opinions

7 03 Title Commitment

CSXT has arranged with Fidelity National Title Insurance Company (the "Title Company") for the preparation of a Title Insurance Commitment (the Title Insurance Commitment initially consists of four Title Insurance Commitments, one for each of Volusia, Seminole, Orange and Osceola Counties, Florida which, by Closing, will be combined into one) covering the Subject Property to be issued to and for the benefit of State in the full amount of the Purchase Price (the "Title Commitment") agreeing to issue an ALTA Owner's Title Insurance Policy (10-17-92) (with Florida modifications) (the "Title Policy") CSXT has requested the Title Company to deliver to the State (i) the Title Commitment, (ii) a legible copy of every document referenced therein, (iii) a legible copy of the title derivation documents (deeds, easements, leases, and other instruments) vesting CSXT with the estate being insured by the Title Commitment and (iv) a legible copy of each recorded conveyance out by CSXT of any portion of the land of which the Subject Property was a part whether shown on Valuation Maps or not It is expressly understood by the parties hereto that CSXT shall have no liability or responsibility under or beyond said Title Policy or as a consequence of any failure of any obligation, term or condition of said policy, howsoever arising, including, without limitation, the insolvency or bankruptcy of the Title Company issuing said policy and/or the Title Company's failure, inability or refusal to perform under said policy, but any such failure, inability, refusal, insolvency or bankruptcy occurring before Closing shall constitute grounds for the termination of this Contract should the same occur on or prior to Closing

7 04 Survey

State is arranging for surveys of the Subject Property (the "Survey") by Florida licensed land surveyors which shall provide metes and bounds description(s) of the Subject Property (the "Survey Description") and will provide a copy thereof to CSXT and the Title Company State acknowledges that while the Survey providing the description of the Subject Property shall be used in the transaction documents contemplated herem, the Survey shall not be binding on CSXT in any manner, and any agreement regarding the binding nature of the Survey in connection with the transactions contemplated hereby shall be solely between State and the Title Company, State acknowledging that subject to the

foregoing exception, no aspect of the Survey shall either bind CSXT in any manner or obligate CSXT to take any actions whatsoever. State further acknowledges that CSXT has not reviewed and shall not be obligated to review the Survey and that CSXT does not warrant the accuracy, correctness or legal sufficiency of the Survey.

7.05 INTENTIONALLY OMITTED

7.06 Recording

State shall cause a counterpart of the Deed (which shall include therein the CSXT Easement) and a counterpart of the Memorandum of Assignment of Transferred Intangibles to be recorded in the public records of Volusia County, Seminole County, Orange County and Osceola County, Florida within five days of Closing and State shall cause a counterpart of the Memorandum of Aloma Spur and Deland Spur Option Agreement to be recorded in the public records of Volusia County and Seminole County, Florida within five days of Closing.

7.07 Conveyance Subject to Intangibles

The Subject Property shall be sold, transferred and conveyed subject to all contracts, agreements, leases, licenses, and easements and all amendments and supplements thereto, pertaining to the Subject Property, or any portion thereof ("Intangible"), which are listed or described in Exhibits 3 and 9 hereto. Nothing contained in this Section shall be construed to (a) limit or restrict any exception, reservation, right or privilege of CSXT under Section 8 of this Contract, (b) limit or restrict CSXT's right to enter into any contract, agreement, lease or license pertaining to the provision by CSXT of rail freight service on the Subject Property, subject to the terms and conditions set forth in the CFOMA, (c) require CSXT to cancel, terminate or amend any existing contract, agreement, lease, license or easement listed or described in Exhibits 3 or 9 hereto to the extent permitted herein or in the CFOMA or (d) require CSXT to cancel or terminate any amendment to an existing or additional contract, agreement, lease, license or easement to which the terms and conditions of Section 8 of this Contract may apply, or (e) impose any obligation on CSXT with respect to Labor Protection, any Labor Challenge or environmental matters.

7.08 Assignment of Transferred Intangibles

At the Closing, CSXT shall assign to State all of CSXT's rights and interests and State shall assume all of CSXT's obligations and liabilities arising under or connected with the contracts, agreements, leases, licenses and easements listed or described in Exhibit 9 hereto which shall include the SP Intangibles and the Transferred Joint Use Intangibles listed in Exhibit 3 (collectively, the "Transferred Intangibles"), but exclude the EP Intangibles and Retained Joint Use Intangible listed in Exhibit 3 pursuant to the Assignment of Transferred Intangibles attached as Exhibit 10 hereto effective from and after Closing and shall execute the Memorandum of Assignment of Transferred Intangibles attached as Exhibit 11 hereto, a counterpart of which State shall cause to be recorded in the public records of Volusia County, Seminole County, Orange County and Osceola County, Florida. The conveyance or retention of an intangible shall carry with it the right to renew, modify, alter, amend and terminate the same, provided the Transferred Intangibles shall not be renewed, modified, altered, and amended in such a way as would interfere with the rights of CSXT under the CSXT Easement and provided, further, that the EP Intangibles and Retained Joint Use Intangibles as well as any contract, agreement, lease license, and easement which pertains to any portion of the Subject Property and is omitted from Exhibit 3 attached hereto (an "Omitted Intangible") shall not be renewed, modified, altered, and amended in such a way as to interfere with State's reasonable utilization of the Subject Property for its intended use as a commuter and passenger rail system. All amounts due under or received by CSXT prior to Closing and relating to the Retained Joint Use Intangibles and Omitted Intangibles, shall remain the property of CSXT and shall not be subject to proration or adjustment of any sort. From and after the Closing Date, CSXT shall pay to State on a periodic basis the amounts received by CSXT under any Omitted Intangible after the Closing which pertains only to some portion of the Subject Property. Further, from and after the Closing Date, CSXT shall pay to State on a periodic basis prorated amounts received by CSXT after the Closing under any (i) any Omitted Intangible which pertains both to the Subject Property and any of the CSXT rail line which is not part of the Subject Property (the "Joint Use Omitted Intangibles") and (ii) the Retained Joint Use Intangibles, both on a per mile proration (that is, if a Joint Use Omitted Intangible and/or Retained Joint Use Intangible, relates to 200 miles of rail corridor, and 43 miles of said rail corridor is contained

within the Subject Property, CSXT shall deliver to State on a periodic basis 43/200 of amounts received by CSXT relating to said Joint Use Omitted Intangible and/or Retained Intangible and due after the Closing Date) It is understood by the parties hereto that the aforesaid contracts, agreements, leases, licenses and easements, inter alia, may grant or confer to others, not party to this Contract, including, without limitation, Amtrak, fiber optic occupancies, rights, interests and privileges in or pertaining to the Subject Property, and that, from and after the Closing Date, except as to the exercise of State's rights under the Joint Use Agreements as provided therein, State shall not cause or suffer any interference with the enjoyment and use of the rights, interests and privileges granted or conferred in such contracts, agreements, leases, licenses and easements listed or described in Exhibits 3 and 9 hereto, and State shall not cause or suffer any breach of such contracts, agreements, leases, licenses and easements At least thirty (30) days before Closing, CSXT shall use reasonable efforts to obtain and deliver to State the written consent to such assignment from any party to said agreements required to give consent under the terms thereof At least thirty (30) days before Closing CSXT shall furnish the State the current mailing addresses of the other parties to the agreements constituting the Transferred Intangibles and at Closing CSXT and State shall execute and State shall send out the Joint Notification Letter of Transferred Intangibles attached as Exhibit 12 hereto, to each party to the agreements constituting the Transferred Intangibles other than CSXT at the notice addresses furnished State by CSXT advising such parties of the assignment Notwithstanding the foregoing, nothing contained in this Contract shall impose upon CSXT an obligation to assign to State any contract, agreement, lease, license or easement listed or described in Exhibit 9 hereto which expires, terminates or is cancelled in accordance with the terms thereof on or prior to the Closing Date Any such expiration, termination or cancellation shall not be construed as a breach of this Contract and shall not constitute grounds for termination or rescission of this Contract To the extent CSXT is granted the right to enter into contracts, agreements, leases and licenses after Closing as to the Subject Property under CFOMA, that agreement shall control the rights and obligations (including the sharing of revenue therefrom) of the parties with respect to the same

In the event that CSXT is unable, for any reason(s), including, without limitation, its inability or failure to obtain any consent to assignment of an Transferred Intangible required by the provisions thereof, to effect, on the Closing Date, the assignment of any contract or agreement constituting the Transferred Intangibles to State, then such failure or inability shall constitute grounds for termination of this Contract

7 10 Searches

To the extent that a tax, title or United States District Court search, a Uniform Commercial Code search, local tax certificates and/or soil tests are desired by State, the State shall have obtained , reviewed and found the same acceptable at State's sole cost and expense prior to the Closing Date and the foregoing shall constitute grounds for the termination of this Contract if not obtained and/or satisfactory to State

7 11 Subdivision Approvals

In the event that any subdivision approval is either desired by State or is necessary for the completion of the sale, transfer and conveyance contemplated by this Contract, said approval may be applied for by State, at its sole risk, cost and expense, including, without limitation, any and all fees, costs and expenses arising out of or connected with the obtaining of subdivision plats, the filing of same with governmental body(ies), recordation thereof and legal fees Nothing contained herein shall be construed as a covenant by CSXT that the Subject Property, or any portion thereof, will be approved for subdivision, and CSXT assumes no obligation or liability for any cost or expense howsoever arising in the event subdivision approval is not secured Failure to obtain any State applied for subdivision approval before Closing shall constitute grounds for the termination of this Contract

Section 8. CSXT's Further Exceptions and Reservations.

8 01 Additional Conveyance Exceptions

In accordance with Sections 1 01 and 7 01 hereof, and subject to the provisions of this Section 8, State shall accept and purchase the Subject Property subject to (a) the CSXT Easement, (b) CFOMA, and (c) the Transferred Intangibles listed on Exhibit 9 hereto and the Retained Joint Use Intangibles listed on

Exhibit 3 hereto, provided, however, that to the extent the Joint Use Agreements specifically provide that such agreement or agreements will supersede the provisions of either the CSXT easement or CFOMA with respect to any matters specifically addressed in such Joint Use Agreement, said Joint Use Agreement shall govern

8 02 Sidetracks

The rights, interests and obligations of CSXT and State with respect to sidetracks shall be governed by the terms and conditions of CFOMA

8 03 Amtrak

The rights, interests and obligations of the parties hereto, or their respective successors or assigns with respect to the Amtrak Agreement shall be governed by the terms and conditions of CFOMA, including, without limitation, Section 3(l) thereof This provision shall survive Closing and the delivery of the Deed

8 04 Assignment of CSXT Easement

State shall have the right to disapprove any conveyance, transfer, assignment, or grant of operating rights to another freight carrier, of the CSXT Easement, provided State will not unreasonably withhold, condition or delay its approval This provision shall be included in the Deed and shall survive the Closing and delivery of the Deed

Section 9. Apportionments .

9 01 Sales/Use Tax

CSXT and State shall each bear and pay one-half of any and all sales and/or use taxes and charges arising out of or connected with the sale, transfer, or conveyance contemplated by this Contract

9 02 Post Closing Taxes, Liens and Charges

It is the intent and understanding of the parties hereto that from and after the Closing Date CSXT shall not be responsible for any taxes, fees, charges, liens, or assessments associated with the State's ownership of the Subject Property and/or the State's interests therein, provided, however, that nothing contained herein shall relieve CSXT from any tax liability which it may have for its retained interests in

the Subject Property including, but not by way of limitation, the CSXT Easement. Additionally, the State shall be required to remove any liens associated with the State's ownership with the Subject Property and/or the State's interests therein to the extent that such liens materially interfere with CSXT's use and enjoyment of the CSXT Easement.

9.03 Utility Charges

Utility charges pertaining to the Subject Property shall be prorated, adjusted and apportioned between CSXT and State as of the Closing Date.

9.04 Real Estate and Personal Property Taxes

Any ad valorem real and personal property taxes as to the Subject Property shall be prorated as of the date of Closing and shall be based upon the net tax bill for the applicable year of proration with allowance for discount for November payment and any other available discounts. Such taxes for the years prior to the year of Closing shall be paid by CSXT. If, however, the amount of such taxes for the year of Closing cannot be ascertained, the rates, millages and assessed valuations for the previous year, with known changes, if any, shall be used as an estimate and tax proration based on such estimate and the estimate shall be readjusted upon the request of either party made within sixty (60) days after the tax collector's mailing of the actual tax bills for the year of Closing. In arriving at an estimated tax proration due allowance shall be made for exemptions and discounts if allowed for the applicable year.

9.05 General Assessments

At the time of Closing CSXT shall pay, or prior to Closing shall have paid, all special governmental assessments and liens for public improvements which are as of the Closing certified liens, in full but as to special governmental assessments and liens for public improvements which are not certified liens as of the Closing but are merely pending as of Closing, State shall assume payment of such pending, but uncertified, special governmental assessments and liens for public improvements. At the time of Closing, certified, confirmed or ratified pending special governmental assessment liens against or in respect to the Subject Property where the work has been substantially completed as of Closing shall be paid in full at the Closing by CSXT.

Section 10. Further Agreements and Instruments.

10 01 CSXT Indemnification

CSXT shall indemnify, protect, defend and hold harmless State from and against any and all liability, cost and expense arising out of or connected with CSXT's ownership and operation on the Subject Property prior to the Closing Date, provided, however, that nothing contained herein shall be construed as modifying or amending any provision of this Contract, including, without limitation, any other provision of this Section 10, Sections 12 and 13 hereof or any other agreement by or between State and CSXT, provided, further, that nothing contained herein shall be construed as creating any responsibility or liability on the part of CSXT with respect to any fault, defect or condition of the Subject Property, and, provided, further, that nothing contained herein shall be construed as applying to any occurrence created or caused by the State in whole or in part by any act or omission of the State

10 02 Labor Protection

CSXT shall be responsible for its Labor Protection costs, if any, occasioned by the transfer contemplated in this Contract. As used herein, "Labor Protection" shall mean the costs, if any, incurred by CSXT as a result of the sale of the Subject Property, which costs may be incurred pursuant to the provision of a collective bargaining agreement, bargained by CSXT as a result of the sale of the Subject Property or pursuant to rule, decision or final order of any governmental agency having jurisdiction over the event. Notwithstanding the above, the parties agree that each shall be solely responsible for their respective risks and costs (including defense costs and liability) associated with any challenge to the transactions pursuant to law, a collective bargaining agreement or otherwise ("Labor Challenge"). State and CSXT acknowledge a policy of non-interference with respect to labor protective decisions by employees.

10 03 Access to Ten Acre Parcel

Regarding access to the Ten Acre Parcel (as hereinafter defined), for the north end entry, State proposes to build access from the Aloma Spur in close proximity to the Amtrak Auto Train Station site access point, and to build a parallel track along the currently existing CSXT mainline. For entry to said

Ten Acre Parcel from the south, State proposes to use the existing turnout located north of McCracken Road and south of the existing Sanford Station building

10 04 CSXT Excluded Property Undertaking

CSXT shall cooperate in all respects with State in the identification of CSXT property included in the conveyance, and shall not knowingly exclude from the conveyance to State, any of CSXT's existing property, whether real, personal, or intangible, the exclusion of which will interfere with State's intended use of the Subject Property of owning, operating, and maintaining a commuter and other passenger rail service on the Subject Property, provided however, if the property that has not been specifically excluded shall be discovered to be essential to such intended use and could be transferred by CSXT to State without adverse impact to CSXT's freight operations and without adverse economic consequences to CSXT, then CSXT, upon written request of State, shall convey or transfer the same to State without additional consideration, on the same basis as set forth herein for conveyance of the Subject Property, whether or not before or after Closing with this provision to survive Closing and the delivery of the Deed

10 05 Sanford Auto Train Facilities and Adjacent Land

Within the triangle created by the Aloma Spur, the abandoned Tavares Branch, and the main line there is an approximately ten (10) acre, more or less, parcel of land owned by CSXT and not leased to Amtrak (the "Ten Acre Parcel") Said Ten Acre Parcel is hatched in yellow on Valuation Map V02064 and is bounded on the south by the abandoned Tavares Branch, on the west by the main line, on the north by the Amtrak auto train yard leased by CSXT to Amtrak (the "Sanford Amtrak Auto Train Yard") and on the east by a street running north and south parallel to and just west of Persimmon Avenue, with 8th Street entering the same from the west The Ten Acre Parcel is included in the Subject Property and the parties acknowledge that among other lawful uses, as such uses are restricted by the provisions of the Deed, State intends to use the Ten Acre Parcel for (i) access to the adjacent Sanford Amtrak Auto Train Yard, (ii) a maintenance yard for State's commuter rail operations and (iii) for the location of storage tracks and other storage related to State's commuter rail operations The parties also acknowledge State is negotiating with Amtrak for the use and occupancy of certain facilities in the Sanford Amtrak Auto

Train Yard in support of State's commuter rail operations To the extent CSXT has any approval rights as to the same under its lease with Amtrak, CSXT shall not unreasonably withhold its approval of such use and occupancy and shall not require any consideration from State or Amtrak in connection with said approval, provided, however, that CSXT shall not incur any cost in connection with such approval or with any such use and occupancy arranged between Amtrak and State and, provided, further, that CSXT shall not suffer any diminution in any of its rights with respect to the Sanford Auto Train Yard as a result of its approval or any such use and occupancy arranged between Amtrak and State CSXT and State further agree that any portion of the property of CSXT in the vicinity of the Sanford Amtrak Auto Train Yard which is leased by CSXT to Amtrak, and which is then used and occupied by State as described herein, shall be considered State Property solely for the purposes of Section 19 and Section 21 of CFOMA, and for no other purpose, and further agree, that as between State and CSXT, State's use and occupancy of said property shall be at State's sole risk, cost and expense including, without limitation, any risk, cost or expense related to environmental matters In addition, before the Exhibit Agreement Deadline as set forth in Section 23 herein, the parties shall in good faith negotiate an agreement (the "Demolition Agreement") wherein CSXT shall be obligated to demolish and remove the debris as to the vacated Amtrak building in the Amtrak Auto Train Yard with State to assume all risk associated therewith, including, without limitation, any environmental risks or liabilities, and pay all cost and expense arising therefrom When such Agreement is reached, it shall be attached as Exhibit 21 hereto

10 06 Sand Lake Road Storage Layover Tracks CSXT has agreed to include, at State's request, certain additional property in the vicinity of Sand Lake Road at no additional cost or expense to State, provided that certain work is to be performed by State on such property at State expense as provided in the Master Projects Agreement

10 07 Further Instruments

From time to time after the Closing Date, CSXT and State shall execute and deliver such other contracts, agreements, consents and instruments of conveyance, transfer, conformance and assignment and take such other action(s) as may be reasonably necessary to effect the purposes of this Contract,

including, without limitation, the enjoyment and use of the exceptions, reservations, rights and privileges contained in Section 8 of this Contract

Section 11. Representations and Warranties.

11 01 CSXT's Representation and Warranties

Nothing in this Section 11 shall apply to any Labor Challenge described in Section 10 of this Contract or environmental matters described in Section 15 of this Contract. As a material inducement to State to execute this Contract including, without limitation, the Exhibits hereto (exclusive of Exhibit 18 pertaining to environmental matters) and to perform its obligations hereunder including without limitation the obligations set forth in the other instruments to be executed hereunder, CSXT hereby represents and warrants to State, as follows

(a) The introduction of CSXT and State to one another and all negotiations by the parties hereto relative to this Contract and the transactions contemplated hereby have been effected and carried out by CSXT without the intervention of any broker, finder or other person, and CSXT has not incurred any obligation that would result in State's liability to pay any brokerage, finder's fee or similar fee in connection with such transactions,

(b) The execution of this Contract and the agreements attached hereto and the performance by it of the various terms and conditions hereof, including, without limitation, the execution of all agreements, notices and other documents required hereunder, have been duly authorized by requisite corporate authority of CSXT,

(c) CSXT is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and is duly licensed or qualified and in good standing and qualified to own and lease property in the State of Florida,

(d) This Contract, when executed and delivered, will be valid and legally binding upon CSXT and enforceable in accordance with its terms, subject to limitation by bankruptcy, insolvency or laws of general application affecting enforcement of creditors' rights,

(e) Neither the execution of this Contract and the other instruments to be executed hereunder by CSXT, nor the performance by CSXT of the various terms and conditions hereto will violate the Articles of Incorporation or By-Laws of CSXT or result in a breach or violation of any term or provision or constitute a default under any indenture, mortgage (subject to the release of liens required under Section 7 01(g) hereof), lease or any other agreement to which CSXT is a party or by which it is bound except as may be provided in the contracts, agreements, leases, licenses and easements listed or described in Exhibits 3 and 9 hereof, and CSXT shall indemnify, protect, defend and hold harmless State from and against any and all liability, loss, cost or damage resulting from any such breach or default of the aforesaid instruments listed or described in Exhibit 3 hereof and in Exhibit 9 hereof, other than a failure after reasonable effort to obtain an assignment or consent

(f) When duly recorded among the land records of Volusia, Seminole, Orange and Osceola Counties, Florida, the Deed issued by CSXT pursuant to this Contract will create a valid and enforceable conveyance of the Subject Property in favor of State of the interests therein stated, subject only to the matters described in said Deed

(g) Except as disclosed by CSXT to State in writing prior to Closing, there is no action or proceeding pending or, to CSXT's best knowledge, threatened challenging CSXT's right, title and interest in and to the Subject Property at law or in equity or the consummation and performance of the transactions contemplated by this Contract, which challenge, if successful, would result in any material adverse effect upon any such transaction,

(h) Except as disclosed by CSXT to State in writing prior to Closing, CSXT has not received notice of any material breach associated with any contract, agreement, lease, license or easement listed or described in Exhibits 3 and 9 from a party permitted to give notice under such instrument,

(i) Except as disclosed by CSXT to State in writing prior to Closing and excluding environmental matters, CSXT has not received notice from any governmental body having jurisdiction over the Subject Property of a material violation of any building, zoning, subdivision, federal, state, county, municipal or local law, ordinance or regulation affecting the Subject Property,

11 02 State's Representations and Warranties

As a material inducement to CSXT to execute this Contract including, without limitation, the Exhibits hereto and to perform its obligations hereunder including, without limitation, the other instruments to be executed hereunder, State hereby represents and warrants to CSXT, as follows

(a) The introduction of CSXT and State to one another and all negotiations by the parties hereto relative to this Contract and the transactions contemplated hereby have been effected and carried out by State without the intervention of any broker, finder or other person, and State has not incurred any obligation that would result in CSXT's liability to pay any brokerage, finder's fee or similar fee in connection with such transaction,

(b) The execution of this Contract and the other instruments to be executed hereunder by State and the performance by it of the various terms and conditions hereof, including, without limitation, the execution of all agreements, notices and other documents required hereunder, have been duly authorized by the State of Florida and fully comply with the laws of such State,

(c) State of Florida Department of Transportation is an agency of the State of Florida, duly organized under the laws of such State, and is qualified to own and lease property in such State pursuant to Chapter 334 of the Florida Statutes (200_), and

(d) This Contract, when executed and delivered, will be valid and legally binding upon State, enforceable in accordance with its terms, and neither the execution of this Contract and the other instruments to be executed hereunder by State, nor the performance by it of the various terms and conditions hereto will violate the laws of the State of Florida or result in a breach or violation of any term or provision or constitute a default under any indenture, mortgage, lease or any other agreement to which State is a party or by which it is bound

Section 12. Disclaimer of Warranty.

Except as otherwise provided in Exhibit 18 hereto, State represents that it has or by the Closing Date will have fully inspected the Subject Property and is relying on such inspection for all purposes whatsoever, including, without limitation, the determination of the character, size, condition, state of

repair and suitability of the Subject Property IN ADDITION, EXCEPT AS MAY BE EXPRESSLY SET FORTH IN THE DEED, BILL OF SALE, ASSIGNMENT OF TRANSFERRED INTANGIBLES, ALOMA SPUR AND DELAND SPUR OPTION AGREEMENT, JOINT USE AGREEMENT(S) AND THIS CONTRACT (INCLUDING, WITHOUT LIMITATION, EXHIBIT 18 HERETO), STATE HEREBY ACKNOWLEDGES THAT THE SUBJECT PROPERTY WILL BE TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE CLOSING DATE, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO STATE BY CSXT OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES

Section 13. Condition of Property.

Subject to the right of termination expressly set forth herein that are exercisable prior to the Closing and subject to CSXT's compliance with the provisions of hereto and any warranties, representations and undertakings of CSXT in the Deed, Bill of Sale, Assignment of Transferred Intangibles, Joint Use Agreement(s), Aloma Spur and Deland Spur Option Agreement, the Environmental Agreement and this Contract, State agrees to accept and purchase the Subject Property, without warranty, "as is, where is," and in the condition in which it finds the Subject Property as of the Closing Date

Section 14. Other Agreements.

14.01 Ancillary Agreements

In conjunction with the transactions contemplated by this Contract, CSXT and State will enter into the following agreements on or before the Closing Date (the execution and delivery of each of which on or before the Closing Date shall be a condition precedent to the obligation of each party to Close) (i) CFOMA, (ii) the Transition Agreement, (iii) the Joint Use Agreements, and (iv) the Master Projects Agreement (including each of the agreements referenced therein), (collectively, the "Ancillary

Agreements"), all as may be amended, from time to time, or cancelled or terminated in accordance with the provisions of the respective Ancillary Agreement, and any such amendment(s), cancellation(s) or termination(s) shall not constitute grounds for the termination of this Contract, or rescission if occurring after Closing in accordance with the provisions of said Ancillary Agreements

14 02 Train Diversion Holdback

Subject to the terms and conditions of any Ancillary Agreement concerning the prepayment provisions relating to CSXT's performance of engineering, construction and design work as may be more fully described in such Ancillary Agreement, State shall be entitled to withhold from the Purchase Price to be paid at Closing the sum of Twenty Five Million and no/100 dollars (\$25,000,000 00), subject to a set-off for the aforesaid payments to CSXT for engineering, construction and design work described in said Ancillary Agreement, pending the diversion of the trains identified in the Transition Agreement Any such withholding shall be held by State in trust for CSXT pending the performance of the terms and conditions of the Transition Agreement and shall be paid to CSXT in cash or its equivalent, without setoff or holdback, other than as may be expressly provided in the Transition Agreement, and with interest thereon from the Closing Date until payment to CSXT, calculated in the same manner as set forth in Section 55 03, Florida Statutes, in accordance with the payment provisions of the Transition Agreement

14 03 CSXT Sales and Other Transactions

From time to time after the Closing Date, CSXT may sell, transfer or convey any of its personal property, may sell, transfer, convey any of its real property or modify, abandon or discontinue rail operations thereon including, without limitation, lines of railroad that may now or hereafter connect with the Subject Property, and CSXT may sell, transfer, convey, abandon or discontinue rail operations on the Subject Property Any such sale, transfer, conveyance, abandonment or discontinuance of operations by CSXT after Closing shall not constitute grounds for the termination of this Contract, and, except as is otherwise expressly provided in an Ancillary Agreement, any such action shall not relieve or release either party hereto from any or all of its liabilities, obligations or responsibilities under this Contract or any Ancillary Agreement

Section 15. Inspection and Environmental Matters.

15 01 Inspections

Prior to the Closing Date, CSXT has made available from time to time for State's inspection the deeds and other instruments evidencing CSXT's right, title and interest in the Subject Property and all contracts, agreements, leases, licenses or easements listed or described in Exhibits 3 and 9 hereto (except such contracts, agreements, leases, licenses or easements which cannot be provided by CSXT without the permission of another party to such document, and in connection with which document said other party declines or refuses to give the necessary consent) Such inspection, in certain respects is continuing at the time of the execution of this Contract and is expected to continue to Closing, including, but not limited to title review, review of the Exhibit 3 documents, the Survey and any environmental matters set forth in an agreement to be entered by the parties for purposes of addressing environmental remediation as further described in Section 15 03 (the "Environmental Agreement"), an outline of which is included as Exhibit 18 hereto On or before Closing, to the extent it has not already done so, CSXT shall deliver to State (a) originals of (i) all the title derivation documents (deeds, easements, leases, and other instruments) vesting CSXT with the estate being insured by the Title Commitment, except where CSXT is retaining any part of the property conveyed by such instrument, in which case a copy shall be provided, and (ii) the documents constituting the Transferred Intangibles listed on Exhibit 9 as well as (b) copies of the executed documents (i) listed as EP Intangibles and Retained Joint Use Intangibles on Exhibit 3, (ii) a legible copy of each recorded conveyance out by CSXT of any portion of the land of which the Subject Property was a part whether shown on Valuation Maps or not that CSXT may possess, (iii) originals of Valuation Maps relating to the Subject Property which CSXT has in its possession after diligent inquiry where print outs are not legible so that the State may have more legible copies made from the originals which shall be returned to CSXT and (iv) any further documents in support thereof that State may reasonably require

15 02 Environmental Liabilities

CSXT and State shall each assume liability for environmental conditions existing prior to Closing subject to and in accordance with the terms and conditions of Section 15.03 of this Contract and the Environmental Agreement described therein. State shall assume liability for environmental conditions that come into existence after the Closing, except as provided in the CFOMA.

15.03 Environmental Agreement

Prior to Closing, CSXT shall have provided State certain access to the Subject Property pursuant to certain Right of Entry Agreements with State and its consultants in order for State to conduct due diligence and make investigations and inspections, including, without limitation, environmental tests. State has, in fact, performed and continues to perform such environmental testing. The environmental testing and the analyses and the results thereof, whether conducted by State and its consultants or by others on or about Subject Property or on property not owned by CSXT for which contamination thereof could affect the Subject Property, are collectively referred to as the "Environmental Assessments", and the results of that testing have been and will be provided to CSXT pursuant to the terms of the Right-of-Entry agreements. Exhibit 18 to this Contract contains an outline of the Environmental Agreement which shall set forth a mutually agreed plan of remediation to address those conditions identified in the Environmental Assessments for which remediation is warranted and standards of remediation consistent with the use of the Subject Property for freight and passenger rail service to be applied with respect to environmental conditions existing prior to Closing on the Subject Property not identified in the Environmental Assessments, subject to the following terms and conditions:

(a) subject to Subsections (b) - (e) below, with respect to environmental conditions that existed prior to Closing, CSXT shall be responsible for such environmental conditions caused by CSXT freight operations. Further, subject to Subsections (b) - (e) below, with respect to environmental conditions that existed prior to Closing, CSXT and State shall be severally (but not jointly) liable for such environmental conditions caused by third parties, with CSXT being responsible for eighty percent (80%) of the costs of such environmental conditions and with State being responsible for twenty percent (20%) of the costs of such environmental conditions. In respect to third parties, CSXT shall be responsible for

prosecuting and shall have the right to prosecute claims against such third parties. State shall cooperate and coordinate with CSXT by providing all available information, data and analyses that it has in its possession relating to any environmental conditions, and shall take any actions reasonable and necessary to support efforts by CSXT to prosecute claims against third parties. When necessary, such reasonable and necessary actions may include State participation as a party in a third-party action for purposes of assuring standing to pursue the action. State shall also allow CSXT access to State employees and consultants with knowledge of such environmental conditions, including allowing same to provide testimony and other evidence in administrative or judicial proceedings.

(b) CSXT's liability under this Contract or the Environmental Agreement for environmental conditions existing prior to Closing assumed by CSXT shall be capped at Twenty-five Million Dollars (\$25,000,000.00), inclusive of any claim for contribution against CSXT brought by any third party related to a claim brought against that third party.

(c) CSXT's obligations under this Section 15.03 or the Environmental Agreement shall cease and be null and void as to any environmental condition not discovered within ten (10) years from the date of Closing.

(d) CSXT's liability under this Contract or the Environmental Agreement shall be limited (i) with respect to environmental conditions existing prior to Closing identified in the Environmental Assessments to performing the plan of remediation mutually agreed to in the Environmental Agreement and (ii) with respect to environmental conditions existing prior to Closing not identified in the Environmental Assessments to the standards of remediation mutually agreed to in the Environmental Agreement, and subject to the State's liability for twenty percent (20%) of the costs arising from the actions of third parties and existing prior to Closing, and

(e) Notwithstanding anything to the contrary contained in this Contract (i) nothing herein shall obligate either party to proceed with or conclude the negotiation of the Environmental Agreement if either party, in its sole discretion, elects not to do so, and (ii) the Environmental Agreement shall be ineffective prior to Closing.

Section 16. Arbitration.

Arbitration is not contemplated for the resolution of controversies under this Contract, except as is otherwise provided under an Ancillary Agreement

Section 17. Termination and Rescission.

17 01 Right of CSXT to Terminate

CSXT shall have the unilateral right to terminate and rescind this Contract, prior to the Closing, in the event of any of the following

(a) Material litigation shall be threatened or pending in connection with the transactions contemplated by this Contract, which litigation or threatened litigation is of such a nature and likelihood of success as to make the continuance of efforts to effect the transactions contemplated by this Contract fruitless,

(b) State has not complied in all material respects with its covenants and agreements contained in this Contract which are to be performed prior to the Closing,

(c) The voluntary or involuntary filing by or against CSXT of any petition, petitions or similar proceedings under the bankruptcy or any insolvency law, federal or state, now or hereafter in existence, or the assignment of all or a substantial portion of CSXT's property for the benefit of creditors, or the appointment of a receiver, trustee or liquidator for all or a substantial portion of CSXT's property,

(d) The institution of a proceeding by any governmental or other lawful authority for the condemnation, expropriation or seizure of the Subject Property, or any portion thereof,

(e) The Closing has not occurred by June 30, 2009, for any reason,

(f) State's failure or inability to deliver the written opinion of counsel as provided in Section 7 02 (i) hereof,

(g) The Ancillary Agreements have not been executed and available for delivery on or before Closing by State, or

(h) State shall not have provided notification to the FRA pursuant to Section 5 02 of this Contract at least thirty (30) days prior to the Closing Date

17 02 Right of State to Terminate

State shall have the unilateral right to terminate and rescind this Contract, prior to the Closing, in the event of any of the following

(a) Material litigation shall be threatened or pending in connection with the transactions contemplated by this Contract, which litigation or threatened litigation is of such a nature as to make the continuance of efforts to effect the transactions contemplated by this Contract fruitless,

(b) CSXT has not complied in all material respects with its covenants and agreements contained in this Contract which are to be performed prior to the Closing,

(c) The voluntary or involuntary filing by or against CSXT of any petition, petitions or similar proceedings under the bankruptcy or any insolvency law, federal or state, now or hereafter in existence, or the assignment of all or a substantial portion of CSXT's property for the benefit of creditors, or the appointment of a receiver, trustee or liquidator for all or a substantial portion of CSXT's property,

(d) The institution of a proceeding by any governmental or other lawful authority for the condemnation, expropriation or seizure of the Subject Property, or any portion thereof,

(e) The Closing has not occurred by June 30, 2009, for any reason,

(f) CSXT's failure or inability to deliver the written opinion of counsel as provided in Section 7 02 hereof,

(g) CSXT's disclosure pursuant to Sections 11 01(g) and/or (h) hereof, of any state of facts unacceptable to State,

(h) The State failing to receive formal funding commitments from Federal, State and local authorities for the institution of commuter rail service on the Subject Property including, without limitation, the receipt by State of a Full Funding Grant Agreement from the Federal Transit Administration ("FTA") for commuter and other passenger rail service on the Subject Property,

(i) Any failure of any obligation, term or condition of the Title Commitment, howsoever arising before Closing, including, without limitation, the insolvency or bankruptcy of the Title

Company and/or said Title Company's failure, inability or refusal to perform under said Title Commitment before Closing,

(j) Any termination, cancellation, or modification as to the agreements constituting the Transferred Intangibles not permitted in this Contract which occurs prior to Closing,

(k) CSXT's failure to obtain any consent to the assignment of any of the Transferred Intangibles from CSXT to State at Closing required by the documents constituting the Transferred Intangibles,

(l) Any tax, title or United States District Court search, a Uniform Commercial Code search, local tax certificates and/or soil tests obtained by the State are found unacceptable to State prior to Closing,

(m) The Title Commitment, documents referenced in the Title Commitment, title derivation documents, any document referenced in the Valuation Maps pertaining to the Subject Property, the Valuation Maps, or other title matter or document as to the Subject Property are unacceptable to State in any respect or should State not complete its review of the foregoing by the Closing Date,

(n) State is not able to complete the Survey by Closing, the Survey is unacceptable to State in any respect, or there is any matter revealed by the Survey which is unacceptable to State in any respect, but CSXT shall not be required to take any steps to have any survey objection cured, omitted, or eliminated,

(o) State is not able to complete the appraisals of the Subject Property by Closing, the appraisals of the Subject Property obtained by State are unacceptable to State in any respect, or there is any matter revealed by the appraisals which is unacceptable to State in any respect,

(p) The legal description of the Subject Property and CSXT Easement being unacceptable to State and/or the Title Company due to the same being legally insufficient, not supported by the Survey or for other reasons, or the documents which are attached to this Agreement are not satisfactory to State when presented for execution and/or as executed,

(q) State is not able to complete any due diligence it desires to complete by Closing whether title examination, examination of the Survey, identification, inspection, and documentation of personal property to be transferred to State, tax, financial, environmental, commercial, regulatory or other due diligence or should any of such due diligence reveal any matter unacceptable to State in any respect,

(r) At the time of Closing any of the representations and warranties of CSXT in this Contract and in the Ancillary Agreements is not true and correct and/or there is a breach or breaches as to same

17 03 Right of Either CSXT or State to Terminate

Either party shall have the unilateral right to terminate and rescind this Contract, prior to the Closing, if

(a) the STB has not dismissed the petition contemplated by Section 5 01 of this Contract,

(b) The STB shall have found that it has jurisdiction over the transaction contemplated in this Contract, and/or shall have imposed any conditions, including labor protective conditions, which either party in its sole and absolute discretion deems unacceptable,

(c) The parties have not complied with the conditions, if any, imposed by the STB, in its decision, to the extent required by the STB's decision to be performed prior to Closing,

(d) The transaction shall have been stayed or enjoined by the STB or by any court,

(e) The State and CSXT fail to receive all necessary regulatory approvals from all regulatory bodies and agencies having jurisdiction over any element of the transactions in this Contract and Ancillary Agreements and for the establishment and operation of commuter and passenger rail service on the Subject Property, all on terms and conditions acceptable to State and CSXT,

(f) Any claim, litigation, labor dispute or work stoppage shall be threatened or pending in connection with the transaction contemplated in the Non-Binding Consolidated Term Sheet, this Contract, any Ancillary Agreement or any agreement between CSXT and State related to the Subject Property,

(g) Any Ancillary Agreement is, without the advance written consent of both parties to this Contract, amended, cancelled or terminated before the Closing,

(h) The Ancillary Agreements have not been executed and delivered by the parties thereto on or before Closing in form and content acceptable to CSXT and State with all Exhibits attached thereto,

(i) There is any default existing and uncured at Closing by any party to an Ancillary Agreement,

(j) The Environmental Agreement has not been executed and delivered by the parties thereto on or before the Closing in form and content acceptable to CSXT and State,

(k) Any environmental condition is disclosed or discovered that causes either party, in its sole discretion, to elect not to Close,

(l) The proposed legislation attached hereto as Exhibit 19 or substantially similar legislation which accomplishes the same intent and purpose, in the sole discretion of CSXT and State, shall not have been enacted by the Legislature and signed by the Governor, and be in full force and effect prior to the Closing Date,

(m) The Master Projects Agreement has not been executed and delivered by the parties thereto on or before the Closing in form and content acceptable to CSXT and State,

(n) The Exhibits not attached hereto have not been agreed upon by the parties hereto by the Exhibit Agreement Deadline set forth in Section 23 herein, initialed by the parties and attached hereto

17 04 Post Termination Liability

In the event that either party hereto terminates this Contract in accordance with this Section 17, then, except as is otherwise expressly provided in this Contract, neither party hereto shall have any liability or further obligation hereunder to the other party hereto

17 05 Notice of Termination

CSXT or State, as the case may be, shall provide notice to the other in the event that CSXT or State shall elect to terminate and/or rescind this Contract pursuant to Sections 17 01, 17 02 or 17 03

17 06 No Post Closing Rescission

Subsequent to Closing, the remedy of rescission shall not be available to the parties hereto, in any event or under any circumstance

Section 18. Extension, Waiver and Amendment.

18 01 Modifications

This Contract may be amended or modified at any time and in any and all respects only by an instrument in writing executed by both of the parties hereto

18 02 Extensions/Waivers

In each instance in which either CSXT or State is entitled to any benefit hereunder, CSXT or State, as the case may be, may (a) extend the time for the performance of any of the obligations or other acts of the other party hereto, (b) waive, in whole or in part, any inaccuracy in or breach of the representations, warranties and covenants of the other party hereto contained herein, and (c) waive, in whole or in part, compliance with the terms and conditions of this Contract by the other party hereto Any agreement on the part of either CSXT or State to any such extension or waiver shall be valid only if set forth in an instrument in writing signed and delivered on behalf of the party making such extension or waiver

Section 19. Notices.

19 01 Notice Provisions/Addresses

Any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by certified mail, postage prepaid, upon the date so delivered or so deposited in the United States mail to the persons at the following addresses

If to CSXT, to

President
CSX Transportation, Inc
500 Water Street

Jacksonville, FL 32202

with copy to

**Peter J. Shudtz
CSX Corporation
Suite 560 National Place
1331 Pennsylvania Avenue, N.W.
Washington, DC 20004**

If to State, to

**Secretary of Transportation
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, FL 32399-0450**

with copy to

**Director, Division of Public Transportation Operations
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, FL 32399-0450**

with copy to

**State Public Transportation and Modal Administrator
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, FL 32399-0450**

19 02 Changes in Notice Addresses

Either party to this Contract may provide changes to its address or addressees by furnishing a notice of such change to the other party to this Contract in the same manner as provided above for all other notices

Section 20. Governing Law.

It is the intention of the parties hereto that the laws of the State of Florida shall govern the validity of this Contract, the construction of its terms and the interpretation of the rights and duties of the parties hereto. Venue for any legal proceedings under this Contract shall be in Leon County, Florida

Section 21. Counterparts.

This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument

Section 22. Interpretation.

State and CSXT acknowledge that the language used in this Contract is language developed and chosen by both parties to express their mutual intent, and no rule of strict construction shall be applied against either party hereto. The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract. All personal pronouns used in this Contract shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder" and "hereinafter" refer to this Contract as a whole and not to the particular sentence, paragraph or section where they appear, unless the context otherwise requires. All words, terms and phrases used in this Contract shall be construed in accordance with the generally applicable definition of such words, terms and phrases in the railroad industry, or otherwise in accordance with their plain meaning. Whenever reference is made to a Section of this Contract, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is expressly made to a particular subsection or subparagraph of such Section.

Section 23. Exhibits.

All exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Contract. Provided however, as to any Exhibits not attached hereto, the parties agree to cooperate in agreeing upon the same by the 30th day of April, 2008 (the "Exhibit Agreement Deadline") and should they not agree upon the same by the Exhibit Agreement Deadline, as may be extended by a writing signed by both parties, then either party may terminate this Contract.

Section 24. Survival.

The terms, conditions, representations, warranties and covenants of this Contract shall survive the delivery of the Deed and the other instruments herein contemplated, and shall not be deemed merged therein or terminated thereby

Section 25. Entire Agreement.

This Contract constitutes the entire agreement among the parties hereto, and, except as otherwise expressly provided herein or in an Ancillary Agreement, supersedes all other prior agreements and understandings, both written or oral, between or among the parties hereto, or any of them, with respect to the subject matter of this Contract, including, without limitation, that certain Non-Binding Term Sheet exchanged as of August 2, 2006

Section 26. Waiver.

Neither the failure to exercise nor any delay in exercising on the part of either party hereto of any exception, reservation, right, privilege, license, remedy or power under this Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any exception, reservation, right, privilege, license, remedy or power under this Contract, preclude any other or further exercise of the same or of any other exception, reservation, right, privilege, license, remedy or power, nor shall any waiver of any exception, reservation, right, privilege, license, remedy or power with respect to any occurrence be construed as a waiver of such exception, reservation, right, privilege, license, remedy or power with respect to any other occurrence

Section 27. Expenses.

Except to the extent otherwise expressly provided in this Contract, any and all expenses incurred by either party hereto in connection with this Contract and the transactions contemplated hereby shall be borne by the party incurring such expenses

Section 28. Further Assurances, Cooperation in Tax Deferred Exchanges.

Both parties hereto shall exert their reasonable best efforts to cause the transactions contemplated by this Contract to be consummated and to fulfill all conditions and obligations of such party under this

Contract State shall cooperate with CSXT at Closing and thereafter in connection with one or more tax deferred exchanges, provided State shall bear no material expense or incur any material liability in connection with such exchanges

Section 29. Time of the Essence.

It is understood and agreed by the parties that the prompt and timely performance of all obligations, responsibilities and conditions under this Contract, including, without limitation, those pertaining to Section 8 hereof, is of the essence of this Contract

Section 30. Prohibition of Third Party Beneficiaries.

Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors and assigns, any right or benefit under or by reason of this Contract, provided, however, that nothing contained in the foregoing provisions shall be construed to limit or restrict the enjoyment and use of the exceptions, reservations, rights and privileges contained in Section 8 of this Contract and the Exhibits referred to therein or any other party's(ies') enjoyment or use of any and all of the exceptions, reservations, rights or privileges that may be granted or conferred to such other party(ies) by contract(s), agreement(s), lease(s), license(s) or easement(s) entered into between CSXT and such other party(ies) pursuant to Section 8 hereto and the Exhibits referred to therein

Section 31. Successors and Assigns.

This Contract shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto, provided, however, that, except as otherwise expressly provided in this Contract, this Contract may not be assigned, in whole or in part, by State other than to any State agency, political subdivision, municipality, county, authority, public body corporate or instrumentality of the State without the prior written consent of CSXT

[Signature Page Follows]

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, duly attested, as of the day and year first written above.

"CSXT"

CSX TRANSPORTATION, INC., a Virginia corporation

Signed and delivered in the Presence of:

Signed Name: Lisa Mancini

Print Name: Lisa Mancini

Signed Name: John M. Gibson, Jr.

Print Name: John M. Gibson, Jr.

BY: Peter J. Shudtz
(Signed Name)
Print Name: Peter J. Shudtz

ITS: Authorized Agent

"STATE"

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

Signed and delivered in the Presence of:

Signed Name: Frank Hickson

Print Name: FRANK HICKSON

Signed Name: George S. Lovett

Print Name: George S. Lovett

BY: Noranne Bous
(Signed Name)

Print Name: Noranne Bous

ITS: District Secretary

Attest: Jennifer Wynn

Print Name: Jennifer Wynn

THE AFOREMENTIONED CONTRACT
HAS BEEN REVIEWED AND
AS TO FORM

FUNDS ARE APPROVED AND
APPROVED AVAILABLE

STATE OF FLORIDA

COUNTY OF DUVAL

I, William P. Byrne, a Notary Public of the State of Florida, do certify that, on the date below, before me in said County, personally came Peter J. Smutz, to me known, and known to me to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did depose, acknowledge and say that he resides in Richmond, Henrico County, Virginia, he is a duly authorized agent of CSX Transportation, Inc., the corporation described in and which executed said instrument; he is fully informed of the contents of the instrument, he signed his name thereto for said corporation pursuant to such authority; and the execution of this instrument is the free act and deed of said corporation, and the conveyance herein is not part of a transaction, sale, lease, exchange or other transfer or conveyance of all or substantially all of the property and/or assets of said corporation

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 13 day of November, 2007


Notary Public
My Commission Expires



STATE OF FLORIDA
COUNTY OF Volusia

I, KERRY MARCHESE a Notary Public of the State of Florida, do certify that, on the date below, before me in said County, personally came NORANNE DOWNS, to me known, and known to me to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did depose, acknowledge and say that she resides in Volusia County, Florida; she is ~~Deputy Assistant~~ Deputy Secretary of Transportation of the Florida Department of Transportation, the State agency described in and which executed said instrument. She is fully informed of the contents of the instrument; he signed the name thereto for said State pursuant to his authority, and the execution of said instrument is the free act and deed of said State of Florida Department of Transportation. *her*

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this 30th day of November, 2007

Kerry Marchese
Notary Public
My Commission Expires



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EXHIBIT 1

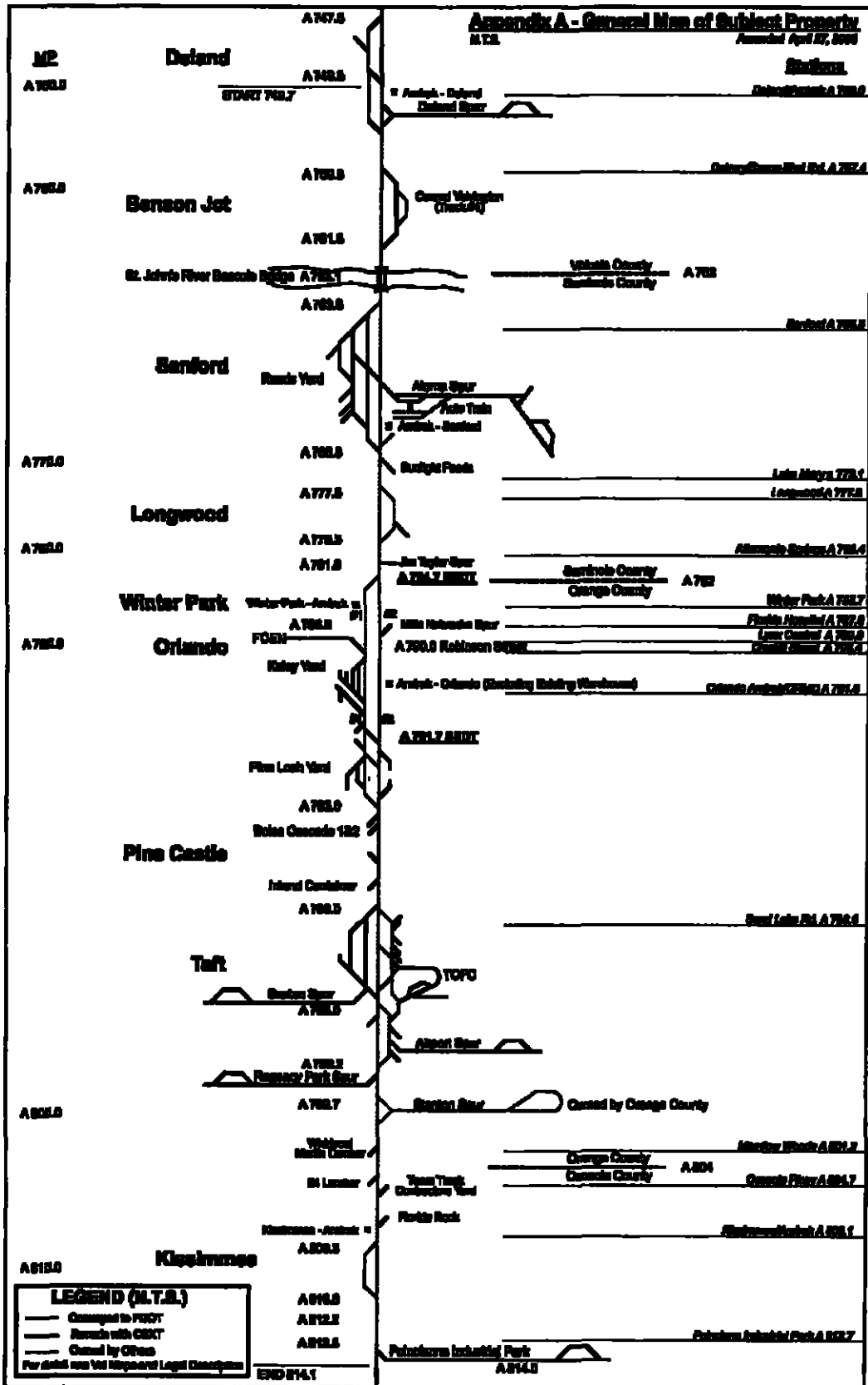


EXHIBIT 2

Execution Copy

**CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT
Between State of Florida Department
of Transportation and CSX Transportation, Inc**

**Pertaining to the Central Florida Rail Corridor, a Line of
Railroad Between Deland, Florida and Pompano, Florida
and Related Properties**

Dated November 30, 2007

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Execution Copy

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CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT

THIS CENTRAL FLORIDA OPERATING AND MANAGEMENT AGREEMENT (this "Agreement") made as of the 30th day of November, 2007 (the "Execution Date") by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC , a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT") Except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A to this Agreement

WHEREAS, by Contract For Sale and Purchase dated as of [_____] ____, 2007 (hereinafter referred to as "Contract"), State agreed to acquire and CSXT agreed to sell certain properties therein described (comprising a portion of CSXT's A-Line) upon which railroad freight, commuter and other passenger rail services are to be conducted, and

WHEREAS, under such Contract, CSXT retained, and did not transfer to State, those perpetual easements (the "CSXT Easement" and the "Reserved Easement") over the properties acquired by State as each perpetual easement is described in the Deed, and

WHEREAS, State and CSXT desire to establish in this Agreement the terms and conditions governing the conduct of Railroad Operations over the State Property in a manner consistent with the other uses of the State Property, it being the mutual intention of the parties hereto that State shall not obtain nor assume any common carrier obligation and that CSXT shall remain, and State shall not become, the rail carrier subject to the Interstate Commerce Act, the ICC Termination Act of 1995, the

Railway Labor Act, or any other federal law as enacted or revised relating to the provision of railroad freight transportation on the properties subject to the CSXT Easement

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS

Section 1 Description Of Use

(a) Subject to the terms and conditions hereinafter set forth, as of the Commencement Date, the State Property shall be used for the conduct of Rail Freight Service, Commuter Rail Service and Intercity Rail Passenger Service, such services being sometimes collectively referred to herein as "Railroad Operations" In addition to the foregoing the State Property may be used for other public and private purposes as hereinafter provided or as may be otherwise mutually agreed to by the parties hereto from time to time during the term of this Agreement CSXT shall have the exclusive right to use the State Property for the provision of Rail Freight Service thereon, and to operate CSXT's trains, locomotives, rail cars and rail equipment thereon with its own crews

(b) Except as is otherwise expressly provided in Section 8 hereof, State shall manage, direct and control the occupation, use and access to the State Property in accordance with the provisions of Section 3 herein

(c) It is understood by the parties hereto that, under its management, direction and control, State shall furnish CSXT adequate facilities, including, without limitation, tracks and bridges, for (i) CSXT's provision of Rail Freight Service on the State Property and (ii) CSXT's performance of its obligations to Amtrak under the Amtrak-CSXT Agreement or as provided by law, in at least substantially the same condition and in substantially the same manner as provided prior to the

Commencement Date hereof (as modified by the Transition Agreement)

Section 2 Compensation

The fees described below shall constitute full and complete consideration to be paid by CSXT to State for all of CSXT's rights and operations (including without limitation, CSXT's rights with respect to the provision of Rail Freight Service on the State Property, CSXT's rights to contract with Amtrak, its successors and assigns with respect to the provision of Intercity Rail Passenger Service on the State Property by same), and all of State's duties and obligations (including without limitation, State's obligation to procure and maintain the insurance described in Section 21 of this Agreement), under this Agreement and the CSXT Easement with respect to the State Property. The fees shall be computed as follows:

(a) Beginning on a date established in the Transition Agreement (the "Fee Commencement Date"), and thereafter for the term of and subject to this Agreement, CSXT shall pay State a usage fee (the "Usage Fee") which shall have two components: a fixed fee component (the "Fixed Fee") and a variable fee component (the "Variable Fee") as follows:

(i) CSXT shall pay State a Fixed Fee of One Hundred Four Thousand, One Hundred and Sixty-six Dollars and Sixty-six Cents (\$104,166.66) per calendar month for each month during the term of this Agreement.

(ii) In addition to the Fixed Fee specified in Paragraph 2(a)(i), above, CSXT shall pay State, on a quarterly basis, a Variable Fee of Thirty-nine Cents (\$0.39) per car mile for each locomotive and each rail car loaded or empty (including each EOT Unit, business car, passenger car, ballast car, and rail car used in a work train, but excluding hi-rail equipment and

maintenance of way machinery moving on its own wheels) handled on the State Property by CSXT, provided, however, that in full and complete consideration of the Variable Fee with respect to Amtrak, CSXT shall pass through to State the funds received by CSXT from Amtrak applicable to the operations by Amtrak on the State Property on a train/mile basis, until such time, if ever, as State and Amtrak enter into a separate agreement as contemplated in Subsection 3(l) of this Agreement, at which time Amtrak operations on the State Property shall no longer be included in the computation of the Variable Fee. Each locomotive unit, EOT Unit, business car, passenger car, ballast car, and work train car (but excluding hi-rail equipment and maintenance of way machinery moving on its own wheels), handled by CSXT on the State Property, for the purpose of this Agreement, shall be counted as one car. With respect to articulated units, the number of cars shall be determined by the AAR Car Type Code as defined in the Uniform Machine Language Equipment Register ("UMLER") Specification Manual. The second numeric in the Car Type Code field covering codes "Q" and "S" shall be the factor in determining the car count for an articulated unit. For example, AAR Car Type Code "S566" would equate to a five (5) car count as these type cars have five wells capable of handling 40' to 48' containers in each well. Car count data for articulated units is subject to change upon development of technology acceptable to both parties that would accurately separate units by Car Numbers.

(b) CSXT shall pay the Fixed Fee component of the Usage Fee required under Paragraph 2(a)(1), above, for the current month within thirty (30) days of receipt of State's invoice which shall be submitted to CSXT not earlier than thirty (30) days before the first day of such month. In the event that the Fee Commencement Date or the termination date of this Agreement falls on a date other than the

first calendar day of the month, the Fixed Fee component of the Usage Fee required under Paragraph 2(a)(1), above, for the first month and/or the final month as the case may be, shall be prorated based on the number of days in such month. With respect to the Variable Fee component of the Usage Fee required under Paragraph 2(a)(1), above, CSXT shall furnish to State, care of Secretary, District 5, Florida Department of Transportation, 719 Woodland Boulevard, Deland, FL 32720, within thirty (30) days of the end of each calendar quarter a statement of the number of loaded and empty rail cars as defined in Paragraph 2(a)(1), above, handled by CSXT over the State Property and the miles traveled by each such car over the State Property during the quarter CSXT shall pay the aforesaid Variable Fee for the immediately preceding quarter within thirty (30) days of receipt of State's invoice following the end of such quarter

(c) The Variable Fee shall be revised upward or downward each year, effective upon each anniversary of the Closing, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, as reflected in the Annual Indexes of Charge-Out Prices and Wage Rates (1977=100), included in "AAR Railroad Cost Indexes" and supplements thereto, issued by the Association of American Railroads ("AAR") In making such determination, the final "Material prices, wage rates and supplements combined (excluding fuel)" indexes for the East District shall be used The Variable Fee shall be revised by calculating the percent of increase or decrease in the index of the latest calendar year as related to the index for the previous calendar year and applying that percent to the Variable Fee For the initial annual adjustment following the Closing, the "latest calendar year" shall mean the calendar year following the Closing and the "previous calendar year" shall mean the calendar year in which the Closing occurs

By way of example, assuming "A" to be the "Material prices, wage rates and supplements

combined (excluding fuel)" final index figure for 2006; "B" to be the "Material prices, wage rates and supplements combined (excluding fuel)" final index figure for 2007, "C" to be the Variable Fee, and "D" to be the percent of increase or decrease, the revised Variable Fee stated herein would be revised by the following formula

$$(1) \quad (B - A)/A = D$$

$$(2) \quad (D \times C) + C = \text{revised Variable Fee, effective upon the anniversary of the Fee Commencement Date of the year being revised}$$

In the event the base for the Annual Indexes of Charge-Out Prices and Wage Rates issued by the AAR shall be changed from the year 1977, appropriate revision shall be made. If the AAR or any successor organization discontinues publication of the Annual Indexes of Charge-Out Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter shall be resolved pursuant to the dispute resolution procedures of Section 17 hereof, including binding arbitration if necessary.

(d) The parties hereby agree that (10) years from the Fee Commencement Date and every ten (10) years thereafter the parties shall renegotiate the Fixed Fee and adjust the Fixed Fee upward or downward, by considering variables such as inflation or deflation, changes in the volume of Rail Freight Service, Intercity Rail Passenger Service and Commuter Rail Service on the State Property, expansion or contraction of CSXT's use of the State Property and such other factors as may be mutually agreed upon by the parties which affect the reasonable interests of the parties. The parties shall commence such negotiations at least six (6) months prior to each such renegotiation in order to conclude such renegotiation prior to any given ten year anniversary of the Fee Commencement Date. In the event that the parties fail to agree on whether an adjustment in the Fixed Fee is appropriate, or on

the amount of such adjustment, the matter shall be resolved pursuant to the dispute resolution procedures of Section 17 hereof, including binding arbitration if necessary. The parties agree that in the event of a dispute, the prior Fixed Fee shall remain in place until such time as the dispute is resolved. In the event the dispute is not resolved until after the ten year anniversary date (the "Expiring Anniversary Date"), the new Fixed Fee shall be applied with retroactive effect as of the Expiring Anniversary Date, but shall not be applied to any period prior to the Expiring Anniversary Date.

Section 3. Operation and Management

(a) Subject to the terms and conditions of this Agreement, from and after the Commencement Date hereof, State shall manage, direct and control all Railroad Operations on the State Property and State shall control the entry and exit of all trains, locomotives, rail cars and rail equipment and the movement and speed of same to, from and over the State Property. Except as is otherwise expressly provided herein, all rules, special instructions, timetables, practices, regulations, and orders governing operations on the State Property shall be promulgated and issued by State and may be modified and amended by State from time to time during the term of this Agreement, provided, however, that in so promulgating, issuing, modifying or amending any such matters State shall not apply any restriction that precludes CSXT's provision of Rail Freight Service on the State Property. CSXT and State shall each designate a single representative for purposes of coordinating activities between State and CSXT under this Agreement

(b) State shall furnish, at its sole cost and expense, any and all supervisory personnel, operators, dispatchers and bridge tenders as may be necessary for the conduct of Railroad Operations by CSXT, State and Amtrak on the State Property

(c) State shall provide, at its sole cost and expense, any and all trains, locomotives, rail cars and rail equipment to be used in the provision of Commuter Rail Service on the State Property and CSXT shall provide, at its sole cost and expense, any and all trains, locomotives, rail cars and rail equipment to be used in the provision of Rail Freight Service on the State Property. CSXT shall equip, at its sole cost and expense, its trains, locomotives, rail cars and rail equipment with radios and such other communication and signal devices that comply with the reasonable requirements established by State from time to time during the term of this Agreement for the conduct of Railroad Operations on the State Property. CSXT and State shall comply with any and all provisions of laws, regulations and rules, including, without limitation, those pertaining to environmental matters, promulgated by any municipality, state or federal board, commission or agency having appropriate jurisdiction, to the extent such laws, rules, or regulations apply to State or the State Property, respecting the operation and use of the State Property and the operation, condition, inspection and safety of their respective trains, locomotives, rail cars and rail equipment while such trains, locomotives, rail cars and rail equipment are being operated on the State Property. In the event that any fine, penalty or liability is imposed upon a party hereto or its officers, agents and employees under any such laws, rules and regulations by any such public authority or court having jurisdiction in the premises which is attributable to the failure of such party to comply with its obligations hereunder, then that party shall pay any and all such fines, penalties and/or liabilities so imposed. In the event a fine, penalty or liability is imposed upon one party which is attributable to the failure of the other party to comply with its obligations hereunder, then the party whose failure to comply with such obligations shall pay any and all such fines, penalties and/or liabilities so imposed on the other party. Notwithstanding the foregoing provisions, the party upon whom a fine, penalty or liability is being proposed to be imposed shall communicate with the

other party and if there is no disagreement between the parties concerning which party's failure is responsible for such fine, penalty or liability, that party shall have the right to contest or settle any such fine, penalty or liability. If the parties do not agree which party's failure is responsible for such fine, penalty or liability, either party may, to the extent permitted by law, contest such fine, penalty or liability, and, provided the party upon whom the fine, penalty or liability is imposed has given notice to and offered to allow the other party to participate in the contest or negotiation of the fine, penalty or liability, may settle such fine, penalty or liability without prejudice to its right to seek reimbursement from the other party under and subject to this Agreement pursuant to Section 17. Nothing in this Section 3(c) shall alter, modify or amend Section 19 of this Agreement.

(d) CSXT shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the State Property, and State shall provide employees, at its sole cost and expense, for the operation of its trains, locomotives, rail cars and rail equipment over the State Property. All of CSXT's and State's employees who shall operate trains, locomotives, rail cars and rail equipment over the State Property shall be qualified by State for operation thereover, and CSXT shall pay to State, within thirty (30) days of receipt of bills therefor, any cost incurred by State in connection with the qualification of such employees of CSXT as well as the cost incurred by State for furnishing pilots, until such time as such employees of CSXT are deemed by the appropriate examining officer of State to be properly qualified for operation as herein contemplated. As used herein, qualification pertains only to the employee's operation of trains, locomotives, rail cars and rail equipment on the State Property in accordance with State's operating rules and practices. For purposes of this Subsection 3(d), any employee of CSXT qualified to operate over the State Property on a date prior to the Commencement Date shall be deemed qualified by State

for operation over the State Property as herein contemplated as of the Commencement Date. On a date prior to the Commencement Date, CSXT shall provide to the State a list of the names of all CSXT employees that CSXT certifies to be qualified to operate over the State Property as of that date

(e) If an employee of CSXT working on State Property is alleged to have violated State's safety rules, operating rules, regulations, orders, practices, or instructions, or if an incident occurs which requires an investigation under applicable CSXT labor agreement rules, CSXT, shall, unless State has actual notice of such alleged violation, provide notice of such alleged violation to State and, when appropriate, shall conduct an investigation. An officer of State may be present during such investigation. After the investigation is concluded, CSXT shall promptly furnish State with two copies of the transcript and a recommendation as to the discipline to be assessed. CSXT shall arrange to assess discipline within the applicable time limits. If State recommends dismissal, CSXT reserves the right to bar the employee from the State Property in lieu of dismissal.

(f) (1) If such employee is barred by CSXT from the State Property, CSXT shall be responsible for any and all claims and expenses because of such action. (2) In a major offense, such as a violation of Rule "G," dishonesty, insubordination, or a serious violation of operating rules, wherein State desires to bar such employee from the State Property pending an investigation by CSXT, immediate verbal notification shall be given to the appropriate Transportation Officer of CSXT so that proper written notice can be issued to the employee, and CSXT shall bar the employee from the State Property. (3) It is understood that State shall reimburse CSXT for all payments CSXT is required to make as a result of a successful challenge (hereinafter "Claim") being made by the employee or his representative as to the discipline when, at the written request or direction of State, as the case may be, such employee has been barred from the State Property prior to an investigation. CSXT agrees to

notify State before making any required payment on any such Claim. In the event such Claim is progressed to an Adjustment Board, State shall be given an opportunity to review CSXT's submission. Any payments required to be made to employees, as a result of an investigation being "overturned," shall include not only actual wages, but in addition, shall include expenses which CSXT may be required to pay covering vacation allowances, Railroad Retirement taxes, unemployment insurance taxes and any other payroll tax or fringe benefits, and the employee shall be permitted to return to the State Property.

(g) If, by reason of any mechanical failure or for any other cause not resulting from an accident or derailment, a train, locomotive, rail car or rail equipment of State or CSXT becomes unable to proceed under its own power, or fails to maintain the speed required by State on the State Property, or, if in emergencies, crippled or otherwise defective rail cars or locomotives are set out of State's or CSXT's trains, then State may furnish such motive power as it may have available or such other assistance, including, without limitation, the making of repairs, as may be necessary to haul, help, push or move such trains, locomotives, rail cars or rail equipment, provided however that in the event that State is unable to assist, CSXT shall, at its own cost and expense, promptly make such repairs or furnish such motive power as may be necessary to expeditiously haul, help, push or move CSXT trains, locomotives, rail cars or rail equipment off of the State Property and may furnish such motive power as it may have available or such other assistance, including, without limitation, the making of repairs, as may be necessary to haul, help, push or move State trains, locomotives, rail cars or equipment. CSXT shall bear and pay to State the cost and expense incurred by State of rendering any such assistance for CSXT and State shall bear the cost and expense incurred by State of rendering any such assistance for itself. Except as provided in Section 19, the party bearing the cost and expense as aforesaid, shall be

responsible for any and all liability, cost and expense arising out of or connected therewith. Any assistance provided by State to CSXT under this provision shall not be considered providing common carrier freight service by State.

(h) In the event State and CSXT agree that State should provide additional employees for the sole benefit of CSXT, the parties hereto shall enter into a separate agreement under which CSXT shall bear and pay any and all cost and expense for any such additional employees provided, including, without limitation, all cost and expense associated with the labor costs, if any, which may be incurred by State and/or CSXT and which would not have been incurred had the additional employees not been provided.

(i) Subject to the terms and conditions of this Agreement, the trains, locomotives, cars and equipment of CSXT, State, and any other present or future user of the State Property or any portion thereof, shall, in the absence of emergency situations, be operated without prejudice or partiality to any party and in such manner, as will afford the economical and efficient manner of movement of all trains, locomotives, rail cars, and rail equipment, within the following operating windows for seven (7) days a week:

- 1 5 00 a m to 10 00 a m (0500 to 1000 hours) and 3 00 p.m. to 10 00 p m (1500 to 2200 hours) - exclusive passenger operation with no limit on the number of commuter or intercity rail passenger trains
- 2 10 00 a m to 3 00 p m (1000 to 1500 hours) and 10 00 p m to midnight (2200 to 2400 hours) - mixed passenger rail and freight rail. All trains operated during this window shall be handled pursuant to a mutually agreed to dispatch protocol which shall take into account the type of train, time of day and on time performance of passenger trains. The CFCRT

Freight Service Plan (Revision 5) jointly developed by the parties hereto and attached hereto as Exhibit 1 (the "Service Plan") is a mutually agreed to initial operating plan, based upon the proposed build-out by State and the simulation described in Appendix 1 to the Service Plan. The Service Plan is intended to be representative of expected local operations and shall be amended from time to time upon the written request of one party to the other, no less than annually, to determine whether any changes to the Service Plan are necessary to accommodate local rail customer requirements and commuter operations and recognizing the need for future passenger and/or freight growth. Any changes to the Service Plan shall be by mutual agreement of the parties hereto. In the event that the parties hereto cannot agree on the need for any changes to the Service Plan, the dispute shall be resolved pursuant to Section 17 hereof.

3. Midnight to 5 00 a.m. (2400 to 0500 hours the following day) - exclusive freight operation with no limit on the number of freight trains.
4. Betterments and additions, curfew and program work, construction and signal suspension will be performed between the hours from 5 00 a.m. until midnight (0500 to 2400 hours), including weekends. Other than in case of emergency, bridge, track and signal inspection and maintenance shall be fairly spread over each party's operating window.
5. All the schedules and consists for the above windows shall be discussed in a manner that reflects the arrangement between CSXT and/or State and Amtrak, to give priority to on-time Intercity Rail Passenger Service.

From time to time during the term of this Agreement, State and CSXT shall allow reasonable flexibility in extraordinary circumstances to accommodate the movement of each other's trains on a

portion of the State Property during the other party's operating windows to ensure that freight and passenger customer needs and non-revenue passenger train needs are met, provided, however, that no priority shall be assigned to the train being accommodated. The parties agree that Amtrak movements over the State Property shall be accommodated in accordance with the Amtrak-CSXT Agreement or the Amtrak-State Agreement. Except with the prior written consent of State, CSXT special and/or excursion trains permitted under Subsection 3(m) hereof shall be operated during the mixed and exclusive freight operating windows only and each such train shall be counted as a freight movement for purposes of Paragraph 3(i)(2).

(j) State and CSXT understand that operations on the State Property may be interrupted or delayed from time to time during the term of this Agreement due to maintenance of or improvements to the State Property performed in accordance with Section 3(i)(4) of this Agreement or Force Majeure as defined in Section 22 of this Agreement. Except as expressly provided in this Subsection (j), neither party shall have any liability to the other for any loss or damage arising out of or resulting from any such interruption or delay. Except as expressly provided in this Subsection (j), CSXT shall be responsible for any and all liability, cost and expense arising out of or connected with any such interruption or delay to Rail Freight Service and State shall be responsible for any and all liability, cost and expense arising out of or connected with any such interruption or delay to Commuter Rail Service. In the event that State desires to perform (i) additions and betterments not in conformity with Section 5 that would interrupt or delay CSXT's Rail Freight Service on the State Property, then prior to the performance or making of such maintenance or improvements, State shall notify CSXT thereof and obtain CSXT's consent therefor, which consent will not be unreasonably withheld or delayed, provided, however, that such consent shall not be required in emergency situations which pose

immediate threat to life or property or prevent the expeditious passage of trains. Failure by State to obtain consent when required under the preceding sentence shall cause State to be responsible for any costs and expenses incurred by CSXT resulting from interruption or delay to Rail Freight Service caused by State performing such maintenance or additions and betterments not in conformity with Section 5.

(k) It is understood by the parties hereto that the State intends to utilize an agent to conduct Commuter Rail Service on the State Property. State shall cause such agent, at no cost or expense to CSXT, to comply with the provisions of this Agreement pertaining to the operation of Commuter Rail Service on the State Property. State shall be responsible for any and all liability, cost and expense arising out of or connected with any act or omission of said agent and said agent shall be considered as State for the purposes of determining between State and CSXT, State's assumption and apportionment of liability, cost and expense under this Agreement.

(l) (i) State and CSXT understand that Intercity Rail Passenger Service and the provision of ancillary services with respect thereto by Amtrak on the State Property are governed by the Amtrak-CSXT Agreement, a copy of which agreement has been furnished to State. Until such time as State enters into a separate contract with Amtrak, State and CSXT hereby understand and agree that CSXT may modify or amend the Amtrak-CSXT Agreement from time to time during the term of this Agreement and may enter into new agreements with Amtrak pertaining to Intercity Rail Passenger Service, all without the consent of State, except as otherwise expressly provided below. CSXT shall obtain the prior written consent of State (which consent shall not be unreasonably withheld, conditioned or delayed) to any such modification, amendment or new agreement in the event that any such action extends the term

of the aforesaid Amtrak-CSXT Agreement governing Amtrak's use of the State Property beyond termination or replacement of the current Amtrak-CSXT Agreement or results in a material decrease in the compensation paid by Amtrak for its use of the State Property, provided, however, that such consent shall not be required in the event that any such action is otherwise required by law or any agreement in effect as of the Commencement Date CSXT shall also notify and consult with State in the event of any change to Amtrak schedules for Amtrak trains operating on the State Property during the periods specified in Subsection 3(1) hereof where such change would result in interruption or delay to Commuter Rail Service on the State Property

(11) It is the understanding of the parties hereto that any agreement for renewal or extension of Amtrak's use of the State Property beyond termination or replacement of the current Amtrak-CSXT Agreement shall be a matter between State and Amtrak, and that State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with any such agreement between State and Amtrak, herein referred to as the Amtrak-State Agreement CSXT shall have no interest in or right of participation in any revenue or income howsoever derived by State from Amtrak for its use of the State Property under any such agreement, and CSXT shall not be responsible for any cost or expense that may result from any such agreement In the event that State and Amtrak enter into the Amtrak-State Agreement, then the terms and conditions of this Agreement shall be amended to reflect the changes arising out of or resulting from such agreement The foregoing provisions apply only to Intercity Rail Passenger Service as provided by Amtrak, its successors or assigns

(m) From time to time during the term of this Agreement following the Commencement

Date, CSXT shall have the right subject to the provisions of Subsection 3(i) hereof to operate non-revenue special and/or excursion trains on or over the State Property carrying CSXT's employees, invitees and/or passengers, provided however that CSXT shall not make such special or excursion trains available to members of the general public CSXT shall be entitled to or responsible for, as the case may be, any and all fees, rents or charges arising out of or connected with such special and/or excursion trains, and such trains shall be considered as trains of CSXT for all purposes under this Agreement, including, without limitation, the provisions of Subsections 2(a) and 19(d) hereof, and for purposes of Section 19 of this Agreement, the aforesaid employees, invitees and/or passengers of CSXT shall be considered as CSXT's employees From time to time during the term of this Agreement following the Commencement Date, State shall have the exclusive right to operate special and/or excursion trains on the State Property carrying State's employees, invitees and/or passengers including members of the general public Except in emergencies, third party detours over the State Property shall be by mutual agreement of the parties State shall be entitled to or responsible for, as the case may be, any and all fees, rents, charges or income arising out of or connected with such detour, special, and/or excursion trains, and such trains shall be considered as trains of State for all purposes under this Agreement, including, without limitation, the provisions of Section 19(d) hereof, and for purposes of Section 19 of this Agreement, the aforesaid State's employees, invitees and/or passengers shall be considered as Rail Commuter Passengers It is understood by the parties hereto that the rights herein granted with respect to special and/or excursion trains shall not be used to expand or modify the provisions of this Agreement pertaining to Rail Freight Service, Commuter Rail Service, or Intercity Rail Passenger Service contemplated under this Agreement

Section 4 Maintenance

(a) Except as is otherwise expressly provided herein, from and after the Commencement Date hereof, State shall have management, direction and control of, and shall perform, or cause to be performed all work of maintaining and repairing the rights-of-way, tracks, bridges, communications, signals, and all appurtenances on the State Property in accordance with the standards specified in Subsection (b) hereof. CSXT shall have management, direction and control of all work of maintaining and repairing the CSXT Property in a condition deemed appropriate by CSXT in its sole judgment and discretion. CSXT shall be responsible for the maintenance of its sidetracks connecting to the State Property, and shall not operate on sidetracks when CSXT determines such operations would be unsafe. CSXT facilities, including Sidetracks, shall be maintained and repaired by CSXT in accordance with the applicable FRA Track Safety Standards and the Sidetrack Agreement pertaining thereto. In the event that State agrees to maintain or repair Sidetracks at CSXT's request, CSXT shall reimburse State on a quarterly basis for the actual cost of maintaining and repairing such Sidetracks. State shall have no obligation to maintain or repair the CSXT Property or any sidetrack that is not on State Property.

(b) In maintaining and repairing the State Property, State shall maintain the rights-of-way, tracks, bridges, communications, signals, and all appurtenances to a level consistent with State standards, then current CSXT's geometry standards, the American Railway Engineering Maintenance-of-Way Association (A.R.E.M.A.) Manual for Railway Engineering, the best generally accepted industry standards, and all applicable FRA track and signal standards. Where specific conflicts arise between the standards described above then State, in its discretion, may apply the more restrictive standard, provided, however, should the CSXT standard with respect to grades, degree of curvature, clearances, or braking distances be more restrictive than any other standard, then State shall apply the

more restrictive CSXT standard. Upon request, the parties shall update one another as their respective standards may change from time to time. Any dispute regarding the use of standards shall be resolved using the procedures in Section 17. State agrees to maintain the mainline on the State Property to achieve at least the FRA Class 4 track standard for freight and passenger trains under the FRA's regulations, as amended. The aforesaid standards shall be applied in a manner that generally permits authorized track speeds, subject to temporary and permanent slow orders and speed restrictions that may be reasonably imposed by State or other lawful authority from time to time in a manner consistent with generally accepted industry standards.

(c) The maximum authorized track speeds may be changed from time to time during the term of this Agreement by State, provided, however, that freight and passenger track speeds shall not be lowered without the consent of CSXT. It is understood by the parties hereto that circumstances warranting a change to such track speeds shall include situations in which no further upgrading of the track is necessary (e.g., the modification or removal of local speed restrictions) or in which the parties otherwise agree to a capital improvement.

(d) The maintenance of the State Property in accordance with the aforesaid standards and maximum and minimum authorized track speeds shall be accomplished by State based on State's sole determination of the necessity and scope of work necessary for the maintenance and repair of the State Property, provided, however, that such maintenance and repair conforms with the aforesaid standards and lawfully permits the authorized track speeds.

(e) From time to time, CSXT, may conduct such inspection of the State Property as it deems appropriate to determine State's compliance with its obligations under Subsection (b) hereof, provided, however, CSXT shall endeavor in good faith to schedule its inspections in a way that will

enable it, upon prior written notice to State, to accompany State on its inspection of the State Property and in the event such inspection discloses any defect(s) from the standards set forth in said Subsection 4(b), CSXT may give State notice thereof, in which event State shall correct such defect(s) within the time provided under applicable laws or regulations. In the event State shall fail to correct such defect(s) within the time provided under applicable laws or regulations, CSXT shall have the right, but not the obligation, to cause such defects to be corrected and State shall reimburse CSXT for the entire cost thereof.

(f) State shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, servicing, fueling, and repairing its trains, locomotives, rail cars, and rail equipment CSXT shall have management, direction, and control of and shall perform, or cause to be performed, at its sole cost and expense, all work of maintaining, servicing, fueling, and repairing its trains, locomotives, rail cars, and rail equipment It is understood by the parties hereto that State, with notice to CSXT but without the approval of CSXT, may enter into agreements from time to time with the Central Florida Commuter Rail Commission, Amtrak, or others for the maintaining, servicing, fueling, and repairing of State's trains, locomotives, rail cars, and rail equipment, provided, however, that in the event any such maintenance, service, fueling, or repair is performed on the State Property, then State shall be responsible for any and all liability, cost and expense arising out of or connected with such maintenance, service, fueling, or repair and said party shall be considered as State for the purposes of determining between State and CSXT, State's assumption and apportionment of liability, cost and expense under this Agreement

(g) As provided in Section 7.08 of the Contract, upon the Closing Date as specified therein, CSXT shall assign to State and State shall assume all of the agreements listed or described in Exhibit 9

therein and all rights and obligations under such agreements pertaining to the maintenance, repair, and operation of existing roadway and highway crossings, crossing protection devices and railway interlocking and interchange facilities on the State Property and thereafter State may renegotiate, renew, terminate, cancel, or modify any such agreements subject to the terms and conditions of Section 8 hereof. It is understood by the parties hereto that State shall have the right to grant new crossings on the State Property subject to the terms and conditions of Section 8 hereof

(h) Nothing contained in this Section 4 shall be construed to modify, amend, limit or restrict the provisions of Section 19 hereof

Section 5 Additions, Betterments, Retirements and Alterations

(a) Subject to the provisions of Section 8 hereof, State, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, or retirements from the State Property first, as shall, in State's sole judgment, be necessary or desirable for the economical or safe operation thereof, provided, however, that any such addition, betterment, retirement or alteration shall not unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property as contemplated in Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Easement or the CSXT Property, and any retirement to the State Property shall be subject to the mutual agreement of State and CSXT or, as pertaining to Sidetracks, in accordance with the provisions of Subsection 1(d), or, second, as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the State Property and such retirements shall be excluded from the State Property. The design and construction standards for the foregoing shall be

subject to the mutual approval of the parties hereto or determined in accordance with Subsection 8(1) hereof. Once the agreed standards are included in a contract and a contract for the applicable work is awarded, CSXT shall not be entitled to alter, amend or modify the standards contained in the contract other than for safety reasons.

(b) If the parties mutually agree that changes in or additions and betterments to the State Property, including changes in communication or signal facilities, are required to accommodate CSXT's operations beyond that required by State to accommodate its own operations, State shall construct, or have constructed, the additional facilities or betterments and CSXT shall pay to State the cost and expense thereof, including the annual expense of maintaining, repairing and renewing such additional facilities or betterments.

Section 6 Revenues

(a) CSXT shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Rail Freight Service on the State Property and the CSXT Easement and CSXT Property.

(b) State shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Commuter Rail Service and other passenger rail service provided by State on the State Property.

(c) The parties hereto understand that Amtrak shall establish rates for and be entitled to any and all revenues of whatsoever amount, kind, nature or description howsoever derived from the provision of Intercity Rail Passenger Service by Amtrak on the State Property.

(d) In addition to the aforesaid entitlements, State and CSXT shall be entitled to revenues

derived from the State Property and the CSXT Property as hereinafter provided in Sections 7 and 8 hereof.

Section 7. Existing Agreements Pertaining to the State Property and the CSXT Property.

(a) The parties have addressed in the Contract the manner in which any and all fees, rents, charges or income arising out of or connected with the contracts, agreements, leases, licenses, intangible rights and easements listed or described in the Contract shall be governed

(b) From and after the Commencement Date, CSXT may renegotiate, renew, terminate, cancel or modify any of its contracts or agreements pertaining to Sidetracks CSXT also may enter into new agreements pertaining to Sidetracks without the consent of State, subject to the provisions of Subsections 3(i) and 8(f) hereof Any rental income from Sidetracks that is derived from and after the Commencement Date by CSXT from such contracts or agreements shall be paid to State within thirty (30) days Except as may be otherwise provided under this Subsection 7(b) and/or in Sections 8, 18, and 19 hereof, CSXT shall be responsible for any and all obligations, liabilities, costs or expenses arising out of or connected with the aforesaid contracts or agreements

Section 8 Future Agreements Pertaining to and Uses of the State Property

It is understood by the parties hereto that State may use, grant to others the right to use, and convey interests in the State Property, in whole or in part, for any lawful private or public purposes, in addition to the Railroad Operations on the State Property contemplated under Subsection 1(a) of this Agreement Such additional uses and conveyances of the State Property will be subject to the provisions of the Contract, this Agreement, including Subsection 1(a), and the CSXT Easement and

will be undertaken by State in its sole discretion and in a manner consistent with the then current Commuter Rail Service, Rail Freight Services, and Intercity Rail Passenger Service on the State Property.

(a) Except as is otherwise expressly provided in this Agreement and except as is otherwise expressly provided under any contract, agreement, lease, license, easement, reservation or restriction of or pertaining to the State Property in existence as of the date hereof, whether or not of record including, without limitation, fiber optic occupancies, State shall have the exclusive right first, to use the State Property on its own behalf for any lawful purpose; and/or, second, to grant and convey to others any and all interests, easements, leases, licenses or rights of occupancy in, on, under, through, above, across or along the State Property, or any portion thereof, provided, however, that the aforesaid rights of State shall not be used to permit any form of Rail Freight Service on the State Property, or any portion thereof, without CSXT's prior written consent, provided, further, that the aforesaid rights of State shall be exercised in such a manner as not to unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property contemplated under Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Property, and shall be otherwise in conformance with the provisions of this Agreement, including, without limitation, Subsections 8(c) and (d) and 38 hereof State shall be entitled to or responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with State's rights under this Subsection 8(a) and CSXT shall have no interest or right of participation in any revenue or income howsoever derived from the enjoyment and use of such rights

(i) Any future uses or improvements on, under, through, above, across, or along the State Property shall be compatible with the existence and continuation of Railroad Operations, shall

not unreasonably interfere with or unreasonably constrain continued Rail Freight Service, Commuter Rail Service or Intercity Rail Passenger Service and shall not include residential use

(11) Subject to (1) above, State may use the State Property for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(11), hereof), and for any other lawful purpose; however, for any other use of the State Property (that being other than for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(11), hereof), the following conditions shall apply: (A) any other use of the State Property by Other Invitees (as defined in Paragraph 19(a)(11), hereof), if and when allowed by State, State shall assume liability, indemnify, and provide insurance as between State and CSXT, solely and to the extent as provided under and pursuant to Sections 19 and 21 hereof, for any liability, cost, or expense for the loss of, damage to, or destruction of any property and for the injury to or death of any such person or persons that occurs on or about the State Property, and, (B) such other use shall be allowed only in areas where there is either (1) no environmental contamination or (2) where such use would not result in a requirement that environmental remediation be conducted to levels more stringent than that which would be required if such use were for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(11), hereof), unless the State agrees to be responsible for any increased liability, cost, and expense for any more stringent environmental remediation resulting from the allowed use over and above that required for Railroad Operations or Incidental Use (as defined in Paragraph 19(a)(11), hereof) and from any claim or claims made related to any use of the State Property in the absence of such remediation having been performed by State as required

(iii) State agrees and acknowledges that CSXT will continue to have a substantial interest in enforcement of Paragraphs (8)(a)(i) through (8)(a)(iii) whether or not CSXT retains title to property adjacent to State Property or retains the CSXT Easement.

(b) State shall provide CSXT sixty (60) days written notice prior to each instance in which State either grants or conveys an interest, easement, lease, license or right of occupancy to any other party(ies) pursuant to Subsection 8(a) hereof, or exercises on its own behalf any right, privilege or license pursuant to said Subsection, that requires or permits any construction, erection or installation on the State Property, or any portion thereof.

(c) In each instance in which State either grants or conveys an interest, easement, lease, license or right of occupancy to any other party(ies) pursuant to Subsection 8(a) hereof, or exercises on its own behalf any right, privilege or license pursuant to said Subsection that requires the performance of any work on the State Property, including, without limitation, the construction, modification, alteration or relocation of railroad tracks, signals, fiber optic transmission systems or communication facilities on the State Property, then State shall use its best efforts to cause or permit such work to be effected in a manner consistent with the requirements of the subject interest, easement, lease, license or right of occupancy or the aforesaid exercise of any right, privilege or license; provided, however, that all such work shall be effected in such a manner as not to unreasonably interfere with CSXT's provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property contemplated under Subsection 1(a) of this Agreement or CSXT's operations on the CSXT Property and shall be otherwise in conformance with the provisions of this Agreement, including, without limitation, this Subsection (c) and Subsection 8(d) hereof. Unless otherwise mutually agreed to by the parties hereto, to the extent any of the aforesaid work on the State Property

involves the construction, modification, alteration or relocation of railroad tracks, signals or communication facilities used by CSXT and/or Amtrak for Railroad Operations, then State shall bear, pay, or cause to be paid, the entire cost and expense of the aforesaid work, including, without limitation, any and all cost and expense incurred by CSXT and others for the relocation of railroad tracks, signals, fiber optic transmission systems or communications facilities and for the provision of services, materials, employees or equipment in connection with such work. In the event a fiber optic occupant bears and pays for any relocation of the fiber optic transmission systems when such relocation is for railroad operational purposes then State shall not be responsible for the cost and expense of such relocation to the extent such cost and expense is borne and paid by a fiber optic occupant. The CSXT Easement shall be adjusted, at the sole cost and expense of State, to reflect any changes to the location of the State Property.

- (d) (i) Notwithstanding any other provision of this Agreement to the contrary, State shall not, without the prior written consent of CSXT, either: (A) grant or convey to others any interest, easement, lease, license or right of occupancy within the following clearances of any of the below specified tracks now or hereafter located on the State Property or the CSXT Property: (1.) Lateral clearances of not less than 10 feet from either side of the centerline of any main track and adjacent sidings and 9 feet from either side of the centerline of any sidetrack; and (2.) Vertical clearances for the entire lateral clearance width aforesaid of not less than 23 feet above the top of each rail of any such track; or (B) cause or permit the building, construction, alteration, erection, installation, demolition or removal of any structure or facility on the State Property within the following clearances of any track now or hereafter located on the State Property or the CSXT Property: (1.) Lateral clearances of not less than 12 feet from either side

of the centerline of any track; and (2.) Vertical clearances for the entire lateral clearance width of any such track of not less than 23 feet above the top of rail of any such track. Nothing in this Subsection (d) shall require State to alter, replace or remove any structure or facility on the State Property that as of the Closing Date as defined in the Contract does not comply with such clearances.

(ii) It is understood by State and CSXT that State shall construct certain platforms for Commuter Rail Service, provided, however, such platforms shall be constructed in accordance with the following clearances:

(A) North of the junction with the Stanton Spur, between Milepost 800 and Milepost 749.7, all platforms shall be fifteen inches (15") ATR and provide a lateral clearance measured from the centerline of the track of not less than five feet, six inches (5' 6"),

(B) South of the junction with the Stanton Spur, between Milepost 800 and Milepost 814.1, all platforms shall not exceed eight inches (8") ATR and provide a lateral clearance measured from the centerline of the track of not less than seven feet, six inches (7' 6").

(C) The platform clearances in (A) and (B) above shall apply only to platforms constructed along tangent track. Any platform to be constructed along curved track shall comply with CSXT's then current clearance requirements or such other clearances as the parties shall mutually agree.

(D) The parties acknowledge an issue with the canopy clearance at the Ocala station. State agrees to obtain a resolution of the issue with the concurrence of the owner of the station within a reasonable time from the Execution Date. In the event that the canopy

issue at Ocala cannot be resolved between State and the owner of the station within a reasonable time from the Execution Date, the platform clearance standards of Subparagraph (d)(ii)(B) shall apply to the entire line.

(iii) State shall submit all plans and specifications for each such platform to CSXT for its review and approval as to its compliance with the above clearance standards. CSXT shall respond with written comments in accordance with Subsection 8(1)

(iv) State shall submit all plans and specifications for any facilities to be built under the tracks on the State Property for CSXT's review and approval in accordance with CSXT's then current engineering specifications for facilities of like type and condition on CSXT's railroad properties. CSXT shall respond to State's submission with written comments in accordance with Subsection 8(1).

(e) CSXT shall have the exclusive right to enter into contracts, agreements, leases and licenses: first, with shippers and receivers of freight and others pertaining to the provision of Rail Freight Service on the State Property and the CSXT Property, provided, however, that CSXT shall not, without first obtaining the State's written consent, which consent shall not be unreasonably withheld, conditioned or delayed, convey, transfer or assign the CSXT Easement or grant any operating rights over all or any portion of the State Property, to any third party (other than such rights as currently exist pertaining to interchange or locomotive run-through); second, with Amtrak, its successors and assigns, pertaining to Amtrak's provision of Intercity Rail Passenger Service on the State Property and the CSXT Property (subject to the provisions of Subsection 3(1) hereof); and, third, with fiber optic occupants, or their successors and assigns pertaining to fiber optic transmission systems to be located on the State Property that would extend onto CSXT Property north of Milepost A749.7 (Sta

39409+00), at or near Deland, FL and/or south of Milepost A814.1 (Sta. 42718+10), at or near Poinciana, FL. CSXT shall collect any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and CSXT shall pay to State on a periodic basis prorated amounts received by CSXT after the date of this Agreement on a per mile proration (that is, if the subject agreement relates to 200 miles of rail corridor, and 43 miles is within the State Property, CSXT shall deliver to State on a periodic basis 43/200th of the amounts received by CSXT under the subject agreement) Further, any such agreement shall be subject to a Joint Use Agreement which shall be entered into between CSXT and State similar to the Joint Use Agreement entered into at Closing as provided in the Contract of Sale State shall have the exclusive right to enter into contracts, agreements, leases and licenses with fiber optic occupants pertaining to fiber optic transmission systems to be located on the State Property that would not extend onto CSXT Property north of Milepost A749.7 (Sta. 39409+00), at or near Deland, FL and/or south of Milepost A814.1 (Sta. 42718+10), at or near Poinciana, FL and State shall be entitled to or be responsible for, as the case may be, any and all proceeds, fees, rents, charges or income arising out of or connected with such contracts, agreements, leases and licenses, and CSXT shall have no interest or right of participation in any revenue or income howsoever derived from such interests, agreements, leases or licenses.

(f) In each instance in which CSXT desires to relocate railroad tracks on the State Property or to construct, erect or install any facility on the State Property, including, without limitation, additional Sidetracks, then prior to the performance of any such work, CSXT shall submit the plans and specifications for same to State for its written approval. State shall provide its written approval of such plans and specifications within sixty (60) days of its receipt of same in the event that the proposed work satisfies the following criteria: first, the proposed work does not unreasonably interfere with the

provision of Commuter Rail Service and/or Intercity Rail Passenger Service on the State Property and/or any reasonably foreseeable use of State Property by State, such uses including, without limitation, light rail (within the City of Orlando, from approximately milepost 787 to milepost 792.5, at State's sole risk and expense, and without impairment to rail freight operations remaining on the State Property or at Kaley Yard, such system to be designed and constructed to provide adequate clearances and the necessary physical separation from the "conventional" rail system utilized by freight and intercity and commuter passenger trains and shall comply with mutually agreed design and construction standards), high speed rail, highway, road, bridge, utility, or other transportation related uses as determined by the State; second, the proposed work is necessary or desirable for the provision of Rail Freight Service and/or Amtrak's provision of Intercity Rail Passenger Service on the State Property, and, third, CSXT pays, or causes to be paid, any and all cost and expense of the proposed work. In the event that State determines that the proposed work will unreasonably interfere with the aforesaid Commuter Rail Service and/or other uses, then within sixty (60) days of its receipt of the aforesaid plans and specifications, State shall provide written notification thereof to CSXT, which notification shall first, to the extent possible, specify the reasonable conditions, including, without limitation, duration of use and modification(s) to the submitted plans and specifications, that are necessary to permit such work to be performed in a manner that will not unreasonably interfere with the aforesaid Commuter Rail Service and/or other uses or, after exhausting such conditions or modifications, State's reasons for denial of such request, such denial only then being final and not subject to Section 17 hereof. To the extent that the plans and specifications are approved subject to modification(s), then the plans and specifications as so modified shall be submitted to State for its written approval, which approval State shall provide within thirty (30) days of its receipt of such

modified plans and specifications if same comply with State's aforesaid notification to CSXT. Upon completion of any work, CSXT shall notify State thereof and certify to State that the work was performed in accordance with the approved plans and specifications before the relocated tracks or other facilities can be placed into rail service. It is understood by the parties hereto that the purpose of the aforesaid approval process is to ensure that any work performed on the State Property is done in a manner consistent with State's reasonably foreseeable use(s) for the State Property; that the approval process specified herein shall not be used to unreasonably prohibit CSXT's development of railroad freight business on the State Property; that the CSXT Easement shall be adjusted to reflect the relocation, construction, erection or installation of any tracks or Sidetracks so occurring; and that no additional compensation shall be paid by CSXT or others to State for the use of any State Property under the foregoing provisions.

(g) Except as may be otherwise provided under Section 19 hereof, in each instance during the term of this Agreement in which State either grants or conveys an interest, easement, lease, license or right of occupancy or uses the State Property on its own behalf under the provisions of this Section 8, State shall be responsible for any and all obligations, liabilities, costs and expenses howsoever arising out of or connected therewith. Except as may be otherwise provided under Section 19 hereof and as modified or supplemented by any applicable Joint Use Agreement, in each instance during the term of this Agreement in which CSXT exercises any right under this Section 8, CSXT shall be responsible for any and all obligations, liabilities, costs and expenses howsoever arising out of or connected therewith.

(h) Nothing contained in this Section 8 shall be construed as granting or conferring to State any right or privilege to use, or permit the use of, CSXT Property for any of the purposes contemplated

in this Section 8.

(i) Whenever State wishes to cause or permit the building, construction, alteration, erection, installation, demolition or removal of any State Property, the following procedures shall apply:

(i) State shall submit to CSXT a copy of the plans and specifications for such facility or structure for CSXT's review. The plans and specifications submitted shall contain sufficient detail to allow meaningful review.

(ii) CSXT shall have thirty (30) days from receipt of such written submittal in which to request additional information or to seek clarification. If CSXT requests such additional information or seeks clarification of the decision, State shall within fifteen (15) days either: (A) supply the additional information or clarification, or (B) notify CSXT that no additional information or clarification is necessary and will not be provided.

(iii) Within ninety (90) days from receipt of the submission of the plans to CSXT pursuant to Paragraph (i), above or within forty-five (45) days of receipt by CSXT of the additional information or clarification provided by State pursuant to Clause (ii)(A), above, or within forty-five (45) days of receipt by CSXT of notification from State that no additional information or clarification will be provided pursuant to Clause (ii)(B), above, whichever time frame is later, CSXT shall transmit its written comments to State.

(iv) If CSXT fails to respond within the ninety (90) days, State may proceed under subparagraph (viii) below.

(v) If CSXT accepts State's proposed plans, the proposed plan shall become final.

(vi) If CSXT objects to the proposed plans, it shall set forth with particularity the reasons therefor, and shall identify reasonable alternatives or conditions that would render the proposed plans not objectionable.

(vii) If State accepts and incorporates CSXT's tendered alternatives or conditions, the proposed plans as so modified shall become final.

(viii) If CSXT fails to respond or State rejects CSXT's tendered alternatives or conditions, either party may provide the other party with the notice required by Subsection 17(a), Paragraph 1 of this Agreement, and the matter shall be subject to Section 17 of this Agreement, it being understood and agreed that Section 17 of this Agreement renders binding arbitration inapplicable to certain matters, including, without limitation, matters reserved for mutual agreement of State and CSXT, and it being further understood and agreed that (A) binding arbitration shall apply to any dispute over State's wish to cause or permit the building, construction, alteration, erection, installation, demolition or removal of any State Property as described in this Section 8(h), including without limitation for failure of CSXT to respond as set forth above, and (B) that in any such arbitration the arbitrator or arbitrators shall apply the standards specified in Section 4(b) of this Agreement.

Section 9. Taxes, Assessments and Utilities.

(a) It is the intent and understanding of the parties hereto that all services performed by State for CSXT under this Agreement, including, without limitation, those performed under Sections 3, 4 and 5 hereof, are railroad transportation services, and accordingly are exempt from the payment of

sales, use or other taxes by either State or CSXT. In the event any taxes, fees, charges, liens or assessments are imposed upon State for such performance of railroad transportation services for CSXT or on the acquisition of property for CSXT by State in conjunction therewith, then same shall be borne and paid by CSXT in their entirety, including, without limitation, any and all interest and penalties thereon.

(b) From and after the Commencement Date hereof, State shall initiate, contract for and obtain, in its name, all utility services required on the State Property for the Railroad Operations contemplated under Section 1 of this Agreement, including gas, electricity, telephone, water and sewer connections and services. The cost and expense for such services shall be considered as a cost of maintenance of the State Property.

Section 10. Casualty Losses.

In the event that any portion of the State Property is damaged or destroyed by accident, flood, fire, civil disturbance, vandalism, earthquake, storm, terrorism, sabotage or act of God, and in the further event that repair or replacement is required by State or CSXT for the continued provision of their respective Railroad Operations contemplated under this Agreement, then, in the event a party determines that such repair or replacement should be made for the exclusive benefit of that party, or the parties agree that such repair or replacement is required for the joint use or benefit of State and CSXT, State shall either: (i) repair, or cause to be repaired, that portion of the State Property so damaged or destroyed to substantially the same condition as existed prior to such damage or destruction or (ii) replace, or cause to be replaced, such portion with property of like kind, condition or quality. The cost and expense of such repair or replacement shall be allocated and apportioned between State and CSXT

as follows.

(a) The cost and expense of any repair or replacement required for the exclusive use or benefit of the State or CSXT shall be borne, paid and arranged entirely by the party so requiring same.

(b) The cost and expense of any repair or replacement required for the joint use or benefit of State and CSXT shall be borne, paid and arranged by State and CSXT on a mutually agreeable basis.

(c) Nothing in this Section 10 referring to an "accident" shall alter or modify the liability provisions of Section 19, or the insurance provisions of Section 21, and whenever any loss of, damage to or destruction of State Property occurs as a result of an accident involving the trains, locomotives, rail cars or rail equipment of, or on the account of State, CSXT, or any other railroad (including, without limitation, FCEN, Amtrak, and/or a detouring railroad), the provisions of Sections 19 and 21 shall govern the liability for the repair or replacement of State Property.

Section 11. Abandonment and/or Discontinuance.

(a) From time to time during the term of this Agreement and notwithstanding any other provision of this Agreement to the contrary, CSXT may seek from the STB appropriate regulatory authority, including without limitation, exemption from the requirements to obtain such authority, to abandon and/or discontinue Rail Freight Service over all or any portion of the State Property. In the event CSXT seeks and obtains such regulatory authority, then the following terms and conditions shall apply.

(i) State may offer financial assistance to CSXT, in accordance with applicable statutory and regulatory provisions, to enable Rail Freight Service to be continued over the State Property or portion thereof so involved with such abandonment or discontinuance. In the event

that such offer of financial assistance complies with applicable statutory and regulatory provisions governing such offers, then CSXT shall accept such offer and shall continue Rail Freight Service on the State Property or portion so involved pursuant to the terms and conditions of such offer. In the event that CSXT believes that such offer does not comport with such applicable statutory and regulatory provisions, then CSXT shall promptly advise State of CSXT's non-acceptance of such offer, and State shall either: (A) seek to have the STB establish the terms and conditions governing the offer of financial assistance, subject to CSXT's participation in any such establishment, or (B) withdraw its offer of financial assistance. In the event that State so seeks to have the terms and conditions established by the STB and the terms and conditions so established are acceptable to State, then State shall so advise CSXT, and CSXT shall continue Rail Freight Service on the State Property or portion thereof so involved in accordance with the terms and conditions so established by the STB. In the event that CSXT should receive an offer as aforesaid from State and one (1) or more offer(s) to purchase the CSXT Easement or subsidize the provision of Rail Freight Service on the State Property, or portion involved, from any other person, then CSXT shall exercise its statutory right to select State as the offeror with whom CSXT desires to transact business, subject to all of the aforesaid provisions governing the acceptability of State's offer and the STB's establishment of terms and conditions in the event of CSXT's non-acceptance of State's offer, provided, however, that if such offer is to purchase the CSXT Easement or portion involved, State shall have the right, without the consent of CSXT, to transfer the CSXT Easement or portion involved to a third party in compliance with any STB requirements.

- (ii) In the event that: (A) State declines or fails to make an offer of financial

assistance to CSXT, as aforesaid; (B) State declines or fails to accept the terms and conditions established by the STB, as aforesaid; (C) State withdraws its offer of financial assistance; or (D) the agreement governing the continuation of Rail Freight Service under such financial assistance terminates by expiration of its term or otherwise, then CSXT may exercise, in whole or in part, the regulatory authority obtained by it for the abandonment or discontinuance of Rail Freight Service on the State Property, or portion thereof, so involved. In the event that CSXT exercises the regulatory authority so obtained, then (1) this Agreement and the CSXT Easement shall automatically terminate and be of no further force and effect with respect to the State Property, or portion thereof, with respect to which CSXT exercises such regulatory authority and, except to the extent so terminated, this Agreement and the CSXT Easement shall remain in full force and effect, and (2) CSXT shall bear the conditions, if any, imposed by the STB on CSXT to protect the interests of CSXT's employees in the abandonment or discontinuance application or petition brought by CSXT under applicable statutory and regulatory provisions.

(b) Nothing contained in this Section 11 shall be construed as precluding CSXT's assignment of this Agreement and the CSXT Easement, in lieu of CSXT's aforesaid abandonment or discontinuance, to any person in accordance with the provisions of Section 37 hereof, provided, however, that any such assignment shall be made subject to the provisions of this Section 11.

(c) As used in this Section 11, the term "applicable statutory and regulatory provisions" means 49 U.S.C. § 10903 et seq. and 49 C.F.R. Part 1152 and the STB's interpretations thereof as of the date of this Agreement. In the event that during the term of this Agreement such statutory and/or regulatory provisions are modified or amended in substantial respect or are repealed, then the parties hereto shall supplement and amend the provisions of this Section 11 in order to continue in effect

substantially the same rights and obligations herein contained.

(d) The foregoing provisions of Subsections 11(a) through 11(c), inclusive, pertain to abandonments or discontinuances subject to the STB's jurisdiction. As of the date hereof, the abandonment or discontinuance of sidetracks are statutorily exempt from the need to obtain abandonment or discontinuance authority from the STB. In the event that at any time during the term of this Agreement any Sidetrack located on the State Property is not used by CSXT for the purpose of providing Rail Freight Service or Amtrak's provision of Intercity Rail Passenger Service for a period of thirty (30) consecutive months, then either party shall so notify the other party and State may notify CSXT of State's desire that such Sidetrack including the track switch(es) connecting such Sidetrack to the mainline or siding, be removed. In the event State so requests, then CSXT shall within sixty (60) days contact the shipper or last known user of such Sidetrack and determine whether use of such Sidetrack in the future for Rail Freight Service is reasonably foreseeable. If such use is not reasonably foreseeable, CSXT shall exercise all rights of cancellation under any contract or agreement pertaining to such Sidetrack and upon the date said contract or agreement is cancelled, this Agreement, only insofar as it pertains to said Sidetrack, shall automatically terminate and be of no further force and effect and State shall be free to require CSXT to remove such Sidetracks at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Sidetrack) and the materials so removed shall be made available to CSXT or such local third party as CSXT shall designate in writing. If no such contract or agreement exists, then upon the date of State's aforesaid notice, this Agreement, only insofar as it pertains to said Sidetrack, shall automatically terminate and be of no further force and effect, and State shall be free to require CSXT to remove such Sidetracks at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Sidetrack) and the materials so removed shall

be made available to CSXT or such local third party as CSXT shall designate in writing. Except to the extent so terminated, this Agreement and the CSXT Easement shall remain in full force and effect. Nothing contained herein shall preclude State and CSXT from mutually agreeing to the removal of any such Sidetrack prior to the expiration of said thirty (30) month period.

Section 12. Compliance with Laws.

(a) During the term of this Agreement, State and CSXT shall comply, at their respective sole cost and expense, with all laws, orders, rules and regulations governing the maintenance and repair of the State Property, including, without limitation, those pertaining to environmental matters, that are promulgated by any municipality, state or federal government, board, commission or agency having appropriate jurisdiction, to the extent such laws, orders, rules, or regulations apply to State or the State Property, and except as set forth in the Environmental Agreement. Either party shall have the right to contest by appropriate legal proceedings, at its sole cost and expense, the validity and applicability of any law, order, rule or regulation of a nature referred to above. To the extent permissible, compliance with such law, order, rule or regulation may be postponed until the final determination of any such proceedings, provided that all such proceedings shall be prosecuted with all due diligence and dispatch on the part of the party hereto contesting same, and, provided, further, that the party contesting same shall be responsible for any and all liability, cost and expense arising out of or connected with any such contest.

(b) Neither party hereto shall permit the State Property to be used by the public without restriction or in such manner as might reasonably tend to impair State's title to the State Property or CSXT's rights and interests therein as contemplated under this Agreement and the CSXT Easement.

The foregoing: (i) shall not be construed to limit or restrict the rights and interests of the parties hereto as provided in this Agreement; and (ii) shall not in any way restrict the public use of the State Property or the CSXT Property in the normal conduct of the Railroad Operations contemplated under Subsection 1(a) of this Agreement.

(c) Whenever State or CSXT enters into any new instrument referred to in Sections 7 or 8 hereof that grants to others a right to occupy or use the State Property, then the party hereto entering into such new instrument shall provide therein that the person so occupying or using the State Property shall comply with all applicable federal, state and local laws, regulations and ordinances respecting such occupancy or use.

(d) Notwithstanding any other provision of this Agreement, in compliance with Florida Statutes, Section 339.135(6)(a), the following language and provisions thereof are hereby made a part of this Agreement:

The department [Department of Transportation], during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the Comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year.

Section 13. Liens and Charges.

CSXT shall not cause or create any lien, claim, mortgage or charge of any nature whatsoever, including, without limitation, mechanics' or materialmen's liens (hereinafter in this Section collectively referred to as "charge") to be asserted against or claimed against the State Property for any reason and State shall not cause or create any charge to be asserted against the State Property which would interfere with or restrict the CSXT Easement. If any such charge shall at any time be claimed against the State Property, then the following provisions shall apply:

(a) The party hereto causing or creating such charge shall cause same to be discharged of record within thirty (30) days of the later of either: (i) the filing or attachment of same; or (ii) the date that the creating party has actual notice of such filing or attachment. If the party causing or creating such charge fails to discharge same within such period, then, except as is otherwise expressly provided in Subsection 13(b) hereof, the other party hereto may discharge the same by paying the amount claimed to be due without inquiry into the validity of the same. Any amount paid by the party discharging the charge and all cost and expense incurred in connection therewith, including, without limitation, reasonable attorney's fees, together with interest thereon at the maximum rate allowed by law from the date of payment, shall be paid by the party causing or creating the charge to the party discharging same within thirty (30) days of the discharging party's submission of a bill therefor

(b) Notwithstanding the foregoing provisions, the party causing or creating a charge shall have the right to contest or settle any such charge, provided, however, that within thirty (30) days of the later of either: (i) the filing or attachment of the charge, or (ii) the date that the causing or creating party has actual knowledge of such filing or attachment, the causing or creating party shall give written notice to the other party hereto of the causing or creating

party's intention to contest or settle such charge; provided further, that the causing or creating party shall be responsible for any and all liability, cost and expense arising out of or connected with such charge, including, without limitation, reasonable attorney's fees; and, provided, further, that the causing or creating party shall diligently prosecute the contesting or settlement of such charge. In the event that the party causing or creating the charge complies with the foregoing provisions, then the other party shall not pay, remove or otherwise proceed to discharge any such charge.

Section 14. Eminent Domain.

The parties hereto understand that the exercise of any lawful authority for condemnation, expropriation or seizure with respect to the State Property, at least insofar as it pertains to the CSXT Easement, would be subject to the jurisdiction of the STB under 49 U.S.C. §10903, et seq, prior to the occurrence of any taking as hereinafter described. In the event that at any time during the term of this Agreement the whole or any part of the State Property shall be taken by any lawful power by the exercise of the right of eminent domain for any public or quasi-public purpose, the following provisions shall be applicable:

(a) **Taking of Whole.** If such proceeding shall result in the taking of the whole, then each party hereto shall have the unilateral right, upon written notice to the other and subject to the securing of any and all necessary governmental approvals, to terminate this Agreement in its entirety and the term hereof shall terminate and expire on the date title to the State Property vests in the condemning authority, and the Usage Fee and any other sums or charges provided in this Agreement shall be adjusted as of the date of such vesting.

(b) Taking of Part. If such proceeding shall result in the taking of less than all of the State Property and does not materially interfere with either State's or CSXT's use of the State Property as contemplated under Subsection 1(a) hereof, then this Agreement shall continue for the balance of its term as to the part of the State Property remaining, and the Usage Fee and any other sums or charges provided in this Agreement shall only be adjusted as of the date of such taking to reflect any increase in CSXT's cost or decrease in CSXT's revenue as a result of the taking so occurring.

(c) Temporary Taking. If the temporary use of the whole or any part of the State Property shall be taken at any time during the term of this Agreement for any public or quasi-public purpose, the party receiving notice thereof shall give prompt notice thereof to the other party and this Agreement shall be adjusted as of the date of such taking to reflect the taking so occurring. For purposes of this Subsection 14 (c), temporary taking shall include all use or occupation of all or any portion of the State Property that shall not exceed ninety (90) consecutive days of use or occupation. In the event that such temporary taking shall exceed such ninety (90) day period, then either State or CSXT may elect to treat such taking in accordance with the provisions of Subsections 14(a), (b) and (d) hereof.

(d) Awards Except as otherwise expressly provided in this Section 14, State shall be entitled to any and all funds payable for the total or partial taking of the State Property without any participation by CSXT; provided, however, that nothing contained herein shall be construed to preclude CSXT from prosecuting any claim directly against the condemning authority for loss of its business, or depreciation to, damage to, or cost of removal of, or for the value of the CSXT Easement, and any other interests or properties belonging to CSXT, including, without limitation, the CSXT Property; and, provided, further, that nothing contained herein shall be construed to create any interest or entitlement in State to any and all funds payable to CSXT for such total or partial taking of the State Property or

any taking of the CSXT Property.

(e) Each party hereto shall provide prompt notice to the other party of any eminent domain proceeding involving the State Property. Each party shall be entitled to participate in any such proceeding, at its own cost and expense, and to consult with the other party, its attorneys, and experts. State and CSXT shall make all reasonable efforts to cooperate with each other in the defense of such proceedings and to use their best efforts to ensure the continued use of the State Property for the Railroad Operations contemplated under Subsection 1(a) of this Agreement.

(f) The provisions of this Section 14 shall apply to and govern all takings involving the State Property by exercise of the right of eminent domain as aforesaid.

(g) Nothing contained herein shall preclude State from exercising its eminent domain powers for any purpose with respect to the State Property, provided, that, such exercise shall not modify, amend, limit or restrict the CSXT Easement or the rights and obligations of the parties hereto under this Agreement and, provided, further, that any such exercise shall be done at no cost or expense to CSXT.

Section 15. Payment of Bills and Records.

(a) All State payments to CSXT called for under this Agreement shall be made by State in accordance with State's standard vendor invoice payment procedures. Except as otherwise expressly provided in this Agreement, all CSXT payments to State called for under this Agreement shall be made by CSXT within thirty (30) days after its receipt of a bill therefor. In cases of a bona fide dispute, those portions of the billings which are undisputed shall be paid in accordance with the time period set forth above, and any dispute reconciled by the parties hereto shall be promptly adjusted in the accounts of

the subsequent months. All bills submitted shall be in sufficient form for pre-audit and post-audit thereof of the services performed pursuant to Section 287.058, Florida Statutes, and shall indicate, to the extent applicable, the dates of the occurrences and time expended therefor. All bills shall be signed by a person who can represent that the costs and expenditures contained in said bill are true and correct to the best of that person's knowledge or belief.

(b) The books, records and accounts of each party hereto, insofar as they pertain to the State Property and this Agreement, shall be open to inspection by the other, upon reasonable request during normal business hours, at the offices of the parties hereto. If so instructed by State, CSXT shall allow public access to all such books, records and accounts subject to the provisions of Chapter 119, Florida Statutes, and made or received by CSXT on behalf of State in conjunction with this Agreement.

(c) In the event CSXT fails to make, when due, any payment to State under this Agreement, then State, to the extent permitted by law, may set off the amount due from CSXT against any payment that is owed by State to CSXT under this Agreement. Payments by State to CSXT shall be subject to Section 215.422 Florida Statutes (2007), which provides, among other things, State has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the services are received. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to CSXT. Interest penalties of less than one (1) dollar shall not be enforced unless CSXT requests payment. Invoices which have to be returned to CSXT because of CSXT preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to State. A vendor ombudsman has been established within the Department of

Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The vendor ombudsman may be contacted at (850) 410-9724 or by calling the Customer Hotline, 1-800-342-2762.

Section 16 Default and Breach.

(a) In the event of a default or breach by either party hereto of any of its obligations under this Agreement, the party in default or breach shall cure such default or breach within sixty (60) days of notice to it from the other party of such default or breach; provided, however, that, except as may be otherwise expressly provided in this Agreement, the party in default or breach, shall be responsible for any and all liability, cost and expense arising out of or connected with such default or breach during the period of such cure; and provided, further, that nothing contained in this Section 16 shall be construed to modify or amend the provisions of Section 19 hereof or to limit or restrict either party's rights thereunder.

(b) The parties hereto expressly acknowledge that the nature and purpose of this Agreement is such that damages may not be an adequate remedy for any default or breach so occurring; and that equitable relief, such as injunction, mandatory or otherwise, may be necessary in the event a party fails to cure a breach or default so occurring; and that, except with respect to the seeking of such equitable relief, any and all controversies arising out of or connected with any default or breach so occurring shall be resolved exclusively by dispute resolution and arbitration in accordance with the provisions of Section 17 hereof. Nothing contained in this Section 16 shall be construed to limit or restrict the parties' rights and obligations under Section 36 hereof

Section 17. Dispute Resolution and Arbitration.

It is the desire and intent of the parties hereto to avoid, if possible, the expense and delay inherent in litigation; therefore, CSXT and the State agree that whenever a party cannot resolve an issue with the other party, both parties will engage in the alternative dispute resolution process described below. This dispute resolution process consists of two steps: executive level resolution of disputes as set forth in Subsection 17(a) and arbitration as set forth in Subsection 17(b).

(a) Executive Level Resolution of Disputes

(1) Notice and Response. A party may give the other party written notice of any dispute not resolved in the normal course of business. Within five (5) business days after delivery of the notice, the receiving party shall submit to the disputing party a written response. The notice and the response shall include (i) a statement of the position of the party delivering the notice of dispute or the response, as the case may be, and a summary of arguments supporting its position, and, (ii) the name and title of the executive who will represent that party in the negotiation to resolve the dispute and of any other person who will accompany the executive.

(2) Negotiation Process. Within ten (10) business days after delivery of the disputing party's notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. The parties will cooperate with respect to reasonable requests for information made by one party to the other, subject to each party's discretion with respect to confidential, proprietary or other non-public information. In an effort to facilitate the negotiation process, such executives may agree to have an unrelated third party moderate and facilitate the negotiations, or may refer the matter to a panel of experts for resolution or recommendation. If a negotiator intends to be accompanied at a meeting by an

attorney, the other negotiator shall be given at least three (3) business days notice of such intention and may also be accompanied by an attorney.

(3) **Termination of Negotiations.** If the dispute has not been resolved within ninety (90) calendar days after delivery of the disputing party's notice; or if the parties fail to meet within twenty (20) calendar days after delivery of the disputing party's notice; or if a panel of experts, having been determined to be appropriate as provided in this Subsection 17(a) fails to provide a recommendation within sixty (60) days of the parties' request for a recommendation; or if within sixty (60) days after receipt of a recommendation of a panel of experts the parties fail to resolve the dispute, either party may give written notice to the other party declaring the negotiation process terminated.

(4) **Obligation of Parties.** The parties regard the obligations to notify the other party of a dispute and to negotiate such dispute pursuant to this Subsections 17(a) and (b) hereof as an essential provision of this Agreement and one that is legally binding on each of them. In case of a violation of such obligation by either party, the other may bring an action to seek enforcement of such obligation in a court pursuant to Section 25 hereof.

(5) **Payment of Fees And Costs.** Each party shall each bear its own costs and expenses incurred in connection with any negotiations and dispute resolution.

(6) **Failure to Resolve Dispute.** Upon failure to resolve any dispute in accordance with this Subsection 17(a), the parties shall engage in arbitration pursuant to Subsection 17(b), unless the parties otherwise agree to engage in mediation or other dispute resolution processes at their discretion.

(b) **Arbitration**

(1) Except as is otherwise provided in Paragraph 17(b)(2) hereof, any controversy under this Agreement that is not resolved pursuant to Subsection 17(a) shall be settled in accordance with the

Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be held at a mutually convenient location, and in the event the parties cannot agree, then at a location specified by the arbitrator(s). It is the intent of the parties hereto that the agreement to arbitrate contained in this Section shall be valid and irrevocable, shall extend to disputes as to whether particular disagreements are arbitrable, and shall be specifically enforceable by either of the parties hereto from and after the date of this Agreement. In interpreting this Agreement and resolving any dispute hereunder, the arbitrator(s) shall apply the laws of the State of Florida. In the event of arbitration, each party hereto shall pay the compensation, costs, fees and expenses of its own witnesses, exhibits and counsel. The compensation, costs, fees and expenses of the arbitrator(s) and the American Arbitration Association shall be paid equally by State and CSXT.

(2) It is understood and agreed by State and CSXT that the provisions of Subsection 17(b) are not applicable to and shall not be used: first, to alter, amend, change, modify, add to or subtract from any of the provisions of this Agreement, except to the extent mutually agreed to by State and CSXT in the submission of the matter to arbitration; second, to resolve any matter subject to the judgment or discretion of one party to this Agreement; and third, except as is otherwise expressly provided herein, to resolve any matter reserved for mutual agreement of State and CSXT.

Section 18. Clearing of Wrecks.

Whenever State's or CSXT's use of the State Property requires re-railing, wrecking service or wrecking train service, State shall be responsible for the performance of such service, including, without limitation, the repair and restoration of roadbed, track and structures. CSXT shall assist State

in the performance of such service to the extent requested by State. The liability, cost and expense of the foregoing, including, without limitation, loss of, damage to or destruction of any property whatsoever and injury to or death of any person or persons whomsoever resulting therefrom, shall be allocated and apportioned in accordance with the provisions of Section 19 hereof. All trains, locomotives, rail cars, and rail equipment and salvage from the same so picked up and removed which is owned by CSXT shall be promptly delivered to it. State shall perform the services under this Section in an expeditious manner in order to restore rail service on the line.

Section 19. Liability.

(a) Notwithstanding any other provision of this Agreement to the contrary, the following words and terms shall have the following meanings for purposes of this Section 19.

(i) The term "Rail Commuter Passenger(s)" shall mean and include any and all persons, ticketed or unticketed, using the Commuter Rail Service or any Incidental Use on the State Property: first, while on board trains, locomotives, rail cars, or rail equipment employed in Commuter Rail Service and/or entraining and detraining therefrom, second, while on or about the State Property for any purpose related to the Commuter Rail Service, including, without limitation, parking, inquiring about Commuter Rail Service or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing rail commuter or other trains, locomotives, rail cars, or rail equipment; and, third, while on or about the State Property for any purpose related to any Incidental Use thereof. The term Rail Commuter Passenger(s) shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(ii) The term "Incidental Use" shall mean certain ancillary uses of the State Property conducted for the convenience and comfort of users of Commuter Rail Service which shall include, without limitation, such activities as restaurants, kiosks and retail facilities, the purpose and function of which are to serve the needs of users of Commuter Rail Service.

(iii) The term "Other Invitee" shall mean any person or persons described in Section 8(a)(ii) of this Agreement, other than those persons on the State Property for Railroad Operations or Incidental Use as defined in Paragraph 19(a)(ii), hereof. Other Invitee shall also mean and include any and all persons meeting, assisting or in the company of any person described in the immediately preceding sentence.

(b) Notwithstanding any other provision of this Agreement to the contrary, whenever any liability, cost or expense is to be assumed by, borne by or apportioned to a party hereto under any of the provisions of this Section 19, then that party shall forever protect, defend, indemnify and hold harmless the other party, its officers, agents and employees, from and against that liability, cost, and expense, assumed by that party or apportioned to it, regardless of whether or not the loss, damage, destruction, injury or death giving rise to any such liability, cost or expense is caused in whole or in part and to whatever nature or degree by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of that party, the other party, or its or their officers, agents and employees, and/or any other person or persons whomsoever.

(c) Except as is otherwise expressly provided by the last sentence of this Subsection 19(c), whenever any loss of, damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs on or about the State Property, including, without limitation, any loss, damage, destruction, injury or death of or to State's contractors, agents or employees, Rail

Commuter Passengers, Other Invitees, trespassers on the State Property and/or any other person on, about or crossing the State Property at highway or roadway crossings or elsewhere by automobile, truck, foot or otherwise, then any and all liability, cost and expense for the loss, damage, destruction, injury or death so occurring shall be borne entirely by State. The foregoing provisions of this Subsection (c) shall not apply to or govern occurrences covered by Subsection 19(d) hereof

(d) The following provisions shall govern the liability, cost and expense and the responsibility of the parties hereto, as between themselves, therefor arising out of, resulting from or connected with the movement of trains, locomotives, rail cars and rail equipment on the State Property:

i. It is the specific and express intent of CSXT and State that State shall be solely responsible for liability, howsoever arising, without limitation, to Rail Commuter Passengers and Other Invitees, and as between CSXT and State whenever Rail Commuter Passengers or Other Invitees suffer any loss, damage, injury or death arising out of, resulting from or connected with any occurrence covered by this Subsection 19(d), then State shall be solely responsible for and assume, without recourse against CSXT, any and all liability, cost and expense therefor.

ii. Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only State being involved, then State shall assume all liability therefor, and bear all cost and expense in connection therewith, including, without limitation, all cost and expense referred to in Section 18 hereof.

iii. Whenever any loss of, damage to or destruction of any property whatsoever, or

injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, only CSXT being involved, then (except for the liability, cost and expense for loss, damage, injury or death to Rail Commuter Passengers or Other Invitees, the liability, cost and expense for which will be solely assumed by State, as aforesaid in Paragraph 19(d)(i)), CSXT shall assume all liability therefor, and bear all cost and expense in connection therewith, including without limitation, all cost and expense referred to in Section 18 hereof.

iv. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, both State and CSXT being involved, then: (A) State and CSXT shall separately assume and bear all liability, cost and expense for loss of, damage to or destruction of trains, locomotives, rail cars (including, without limitation, lading) and rail equipment operated by each of them; (B) State shall assume and bear all liability, cost and expense for injury to and death of Rail Commuter Passengers, Other Invitees and State's officers, agents, contractors and employees; (C) CSXT shall assume and bear all liability, cost and expense for injury to and death of CSXT's officers, agents, contractors and employees, and (D) State and CSXT shall equally assume and bear all liability, cost and expense for injury to or death of any person not referenced in Subparagraph 19(d)(iv)(B) or 19(d)(iv)(C) and for loss of, damage to and destruction of all other property not referenced in Subparagraph 19(d)(iv)(A) (including, without limitation, the State Property) so occurring, including, without limitation, all cost and expense referred to in Section 18 hereof, provided, however, that this Subparagraph

19(d)(iv)(D) shall be ineffective and shall not apply to any injury to or death of any trespasser (the liability, cost and expense of which shall be borne in accordance with Subsection 19(c) above), nor to any injury to or death of any person or persons on or about the State Property in connection with, arising from or related to, Intercity Rail Passenger Service, including, without limitation, passengers and any person or persons aboard, waiting for, boarding or alighting from trains operated by Amtrak (including, without limitation, any person or persons assisting or accompanying any of the foregoing passengers or persons).

v. Except as provided in Paragraph 19(d)(vi) below, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail equipment of, or in the account of, (A) both CSXT and any other railroad using the State Property being involved (including, without limitation, FCEN, Amtrak and/or any detouring railroad), or (B) both State and any other railroad (other than CSXT) using the State Property being involved, (including, without limitation, FCEN, Amtrak and/or any detouring railroad), then FCEN and/or Amtrak and/or any other such railroad, shall be considered as State for the purpose of determining between State and CSXT, CSXT's assumption and apportionment of liability, cost and expense under Paragraph 19(d)(iv) above, provided, however, where the event is as described in Subparagraph 19(d)(v)(B), where no CSXT train is involved, then Subparagraph 19(d)(iv)(D) shall not apply.

vi. Whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever (including, without limitation, Rail Commuter Passengers or Other Invitees), occurs with the trains, locomotives, rail cars or rail

equipment of, or in the account of, State, CSXT and any other railroad (including, without limitation, FCEN, Amtrak and/or a detouring railroad) using the State Property being involved, then FCEN and/or Amtrak and/or any other such railroad shall be jointly considered as State and a single party to this Agreement for the purpose of determining the assumption and apportionment of liability, cost and expense between CSXT and State under Paragraph 19(d)(iv) above, provided, however, that CSXT's share of that liability, cost and expense that is to be borne equally by State and CSXT under said Subparagraph 19(d)(iv)(D), above, shall be reduced from one-half (1/2) to one-third (1/3) of such liability, cost and expense in the event that such other railroad bears and pays to State one-third (1/3) or more of the aforesaid liability, cost and expense. The division of liability expressed in this Subparagraph 19(d)(vi) applies only to that cost and expense that is to be borne equally by State and CSXT under Subparagraph 19(d)(iv)(D) and shall be ineffective and shall not apply to (A) any injury to or death of any trespasser (the liability, cost and expense of which shall be borne in accordance with Subsection 19(c) above), (B) any Rail Commuter Passenger, Other Invitee or other person referenced in Subparagraph 19(d)(iv)(B) or Subparagraph 19(d)(iv)(C), or (C) any injury to or death of any person or persons on or about the State Property in connection with, arising from or related to, Intercity Rail Passenger Service, including, without limitation, passengers and any person or persons aboard, waiting for, boarding or alighting from trains operated by Amtrak (including, without limitation, any person or persons assisting or accompanying any of the foregoing passengers or persons). Nothing contained in the aforesaid proviso shall be construed as limiting or modifying either party's respective obligation to assume and bear all liability, cost and expense for: (A) loss of, damage to or destruction of the trains, locomotives, rail cars and

rail equipment operated by that party; and (B) injury to and death of that party's officers, agents, contractors and employees; all as provided in said Paragraph 19(d)(iv).

vii. Notwithstanding any other provision of this Agreement to the contrary, for the purposes of this Subsection 19(d), the term "rail equipment" shall mean and be confined to maintenance of way and work train equipment and other vehicles and machinery (such as hi-rail trucks) which are designed for operation on and are being operated on railroad tracks on the State Property at the time of any occurrence under said Subsection 19(d).

viii. For purposes of this Subsection 19(d), pilots furnished by State to CSXT pursuant to Subsection 3(d) of this Agreement shall be considered as the employees of CSXT.

ix. For purposes of this Subsection 19(d), the term "person" shall include, without limitation, the employee(s) of a party hereto and the term "employee(s)" shall mean and include: (A) employees of a party hereto; (B) for each party hereto, the invitee(s) to the State Property of each such party, which shall include the employees of parties to agreements referred to in Subsection 7(a) hereof as further described in the Contract, excluding Rail Commuter Passengers and Other Invitees.

(e) In every case of death or injury suffered by an employee of either State or CSXT, when compensation to such employee or employee's dependents is required to be paid under any workmen's compensation, occupational disease, employer's liability or other law, and either of said parties, under the provisions of this Agreement, is required to pay said compensation, if such compensation is required to be paid in installments over a period of time, such party shall not be released from paying any such future installments by reason of the assignment, expiration or other termination of this Agreement prior to any of the respective dates upon which any such future installments are to be paid

(f) The parties hereto understand that liability pertaining to interruptions and delays is governed by Subsection 3(j) hereof.

(g) Each provision of this Section 19 shall be interpreted so as to be effective and valid. In the event, however, that any provision of this Section 19 shall, for any reason, be held invalid, illegal or unenforceable in any respect, then this Section 19 shall be construed as if such provision had never been contained herein in order to effect to the fullest extent the purposes of this Section 19 and the intentions of the parties with respect thereto.

(h) Nothing expressed or implied in this Section 19, including, without limitation, Paragraphs 19(d)(v) and (vi) hereof is intended to or shall be construed to: (A) confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns any right or benefit under or by reason of this Section 19, or (B) limit or restrict either party hereto from seeking damages, redress or other relief from any person, firm, partnership, corporation or governmental entity other than the parties hereto, their respective legal representatives, successors or assigns.

(i) No provision in this Agreement shall constitute or be construed to constitute a waiver of State's sovereign immunity for tort and the parties hereto recognize and agree that the insurance and self-retention fund required under Section 21 below shall be the extent and sole source upon which State's liability under this Section 19 rests beyond that provided under the limited waiver of sovereign immunity contained in Section 768.28, Florida Statutes (2006).

Section 20. Investigation.

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property

damages and losses arising out of or connected with this Agreement shall be investigated, adjusted and defended by the party bearing the liability, cost and expense therefor under the provisions of this Agreement, including, without limitation, State's obligation to investigate any and all such claims, injuries, deaths, property damages and losses involving Rail Commuter Passengers or Other Invitees.

(b) CSXT will investigate, adjust and defend all freight loss and damage claims filed with it in accordance with applicable provisions of law and all claims, injuries and deaths of CSXT's employees, for which either CSXT or State solely or CSXT and State jointly may have any liability under the provisions of this Agreement.

(c) The party hereto receiving notice of the filing of a claim will promptly notify the other party of such filing where liability therefor may be joint or that of the other party hereto. State and CSXT will cooperate with each other in all such investigations, adjustments, and defenses, and State and CSXT will provide each other, upon request therefor, a copy of all documents and written communications and produce witnesses, experts or exhibits in their employment or control to assist in the preparation and defense of any such claim and/or litigation with respect thereto.

(d) In the event a claim or suit is asserted against any party which is another's duty hereunder to investigate, adjust or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment and defense of such claim or suit, and the party relieved of duties in respect of such claim or suit shall cooperate as requested by the party investigating, adjusting or defending said claim or suit

(e) All costs and expenses in connection with the investigation, adjustment and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in this Agreement.

(f) CSXT shall not settle or compromise any claim, demand, suit or cause of action of any CSXT employee for which State has any liability under this Agreement without the concurrence of State if the consideration for such settlement or compromise exceeds Fifty Thousand and no/100 Dollars (\$50,000.00).

(g) It is understood that nothing in this Section 20 shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 19 or elsewhere in this Agreement.

Section 21 Insurance.

It is understood by the parties hereto that the provisions of this Section 21 are designed to establish parity between the parties and are based upon their financial ability to meet various obligations for which each of them is responsible under the various liability provisions of this Agreement. Toward this end, the parties shall review, on an annual basis, the provisions of this Section 21 and use their reasonable best efforts to agree upon any modifications thereto that may be appropriate due to changed circumstances. In the absence of any such agreement, the provisions of this Section 21 shall remain in full force and effect.

(a) Notwithstanding any provision of this Agreement to the contrary, the parties hereto understand that State, as a sovereign creature, cannot contractually indemnify and save harmless CSXT or any other party without an express waiver of sovereign immunity by the Florida Legislature. As of the date of this Agreement, no waiver of sovereign immunity exists except and to the extent as allowed under Section 768.28, Florida Statutes (2006) for tort. State will seek legislation in connection with this Agreement that expressly authorizes the effectiveness of the provisions of Section 19 and Section 21 of this Agreement. Accordingly, and notwithstanding any provision of this Agreement to the

contrary, State shall purchase insurance and establish and maintain an adequate, segregated self-insurance retention fund which will cover claims and liabilities for loss, damage, injury or death arising out of or connected with this Agreement, including, without limitation, State's contractual liabilities under this Agreement, in the amounts and as provided for in Subsection 21(b) hereof. The parties hereto recognize that said insurance and fund shall be the extent and sole source upon which State's liability and/or indemnification under this Agreement rests beyond that provided under the limited waiver of sovereign immunity contained in the aforesaid Florida Statutes. The obtaining of the enabling legislation and such policy of insurance and the establishment of said fund by State is a condition precedent to the commencement of this Agreement and the commencement of Commuter Rail Service on the State Property, and the continued effect of said legislation and obtaining and maintenance of said insurance and fund in full force and effect shall thereafter throughout the term of this Agreement be considered a condition subsequent to the continuation of Commuter Rail Service on the State Property. In the event that the obligations of State set forth in Section 19, and 21 of this Agreement become ineffective for any reason, or the insurance policy is canceled for any reason and/or the deductibles or self-assumed amounts of said insurance policy is unfunded, in the opinion of CSXT, then State shall immediately cease operation of any and all Commuter Rail Service on the State Property until such time, if any, that the obligations of the State under Section 19 and Section 21 of this Agreement become fully effective again and/or State shall obtain and thereafter maintain insurance in like amount and coverage protection to that described in this Section 21 and/or replenish the fund, as the case may be. It is understood and agreed by the parties hereto that State's cessation of Commuter Rail Service on the State Property, as aforesaid, shall not in any manner modify, amend, limit or restrict the CSXT Easement or CSXT's rights hereunder with respect to the provision of Rail Freight Service

and/or Intercity Rail Passenger Service on the State Property, and shall not modify or amend any other obligation of State under this Agreement.

(b) State, at its sole cost and expense, shall procure and shall maintain during the entire term of this Agreement, liability insurance covering CSXT as a named insured as agreed and provided in the terms and conditions of Section 21(a) hereof. The said liability insurance shall have a limit of not less than Two Hundred Million and No/100 Dollars (\$200,000,000.00) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of Ten Million and No/100 Dollars (\$10,000,000.00). The said liability coverage within its terms and conditions shall extend coverage to CSXT for third party personal injury and property damage, and shall not exclude punitive damages. Coverage shall provide employer's liability coverage to CSXT for liabilities incurred to employees involved with this Agreement under any applicable employee liability regime, including without limitation, the Federal Employers Liability Act.

(c) State shall furnish CSXT's insurance department, 500 Water Street, C-907, Jacksonville, FL 32202, a certified copy of the liability insurance policy for CSXT's approval, which approval will not be unreasonably withheld. The policy shall be endorsed to provide for not less than sixty (60) days' notice to CSXT prior to termination of or change in the coverage.

(d) In the event that any operating practice of CSXT jeopardizes the obtaining and maintaining of the insurance policies required of State hereunder, then, upon reasonable request and notice from State (which notice shall include all communications with respect to the offending operating practice between State and its insurance carrier), CSXT shall modify the offending operating practice in a manner sufficient to obtain or maintain such insurance, provided that in no event shall CSXT be required to adopt a practice that is not consistent with generally accepted operating practices

in the railroad industry. As used herein, the term "operating practice" shall exclude any practice that would require CSXT to modify any facilities and/or equipment, unless the cost and expense of such modifications to facilities and /or equipment are borne and paid entirely by State.

(e) The amount of insurance required of State under this Section 21 shall be adjusted from time to time during the term of this Agreement to reflect the effects of inflation and such other matters as may be mutually agreed upon by the parties hereto and at such times the parties may also adjust the deductible or self-assumed amounts. The parties hereto recognize that the amount of insurance required of State herein reflects the risks attendant with Commuter Rail Service and such amount shall be adjusted by mutual agreement of the parties during any period during the term of this Agreement that such Commuter Rail Service may be suspended or canceled. The parties hereto also recognize that the amount of insurance required herein of State reflects the risks attendant with the indemnification provided by State under the legislation described herein and reflected in Sections 19 and 21, hereof.

(f) As of the date hereof, CSXT maintains system-wide insurance (which covers, inter alia, its Rail Freight Service on the State Property) with a limit in excess of Two Hundred Million and No/100 Dollars (\$200,000,000.00) and deductibility or self-assumed amounts of Twenty-five Million and No/100 Dollars (\$25,000,000.00). It is understood by the parties hereto that from time to time during the term of this Agreement CSXT may, at its option, change the limits, coverage and deductibility or self-assumed amounts of its aforesaid insurance. In the event that CSXT assigns this Agreement pursuant to the provisions of Section 37 hereof to any person, firm, partnership or corporation that is not affiliated with CSXT, then: first, the amount of insurance required of State under Subsections (a) and (b) hereof may, at State's option, be reduced to a limit of Thirty Million and No/100 Dollars (\$30,000,000.00), and, second, as a condition to the conduct of operations by such

person, firm, partnership or corporation on the State Property, State may, at its option, require such entity to maintain during the remainder of the term of this Agreement insurance having a limit of Thirty Million and no/100 Dollars (\$30,000,000.00) combined single limit for personal injury and property damage per occurrence, with deductibles or self-assumed amounts not in excess of One Million and no/100 Dollars (\$1,000,000.00). To the extent and in the event mutually agreeable to State and such other entity, the aforesaid limits and/or amounts of insurance required of State and such other entity may be changed from time to time during the term of this Agreement.

Section 22. Force Majeure.

Whenever a period of time is provided in this Agreement for either party to do or perform any act or thing, said party shall not be liable or responsible for any delays due to strike, embargo, derailment, lockout, casualty, fire, flood, weather condition, earthquake, act of God, war, terrorism or threatened acts of terrorism, court order, work stoppage, nuclear incident, riot, civil disturbance, public disorder, criminal act of other entities, governmental regulation or control, governmental or judicial restraint or other such causes beyond the reasonable control of said party (collectively, "Force Majeure"); and in any such event of Force Majeure, said time period shall be extended for the amount of time said party is so delayed, provided that this Section 22 shall not be construed to affect the responsibilities of said party hereunder to do or perform such act or thing once such event of Force Majeure has been removed.

Section 23. Extension, Waiver and Amendment.

- (a) This Agreement may be amended or modified at any time and in any and all respects

only by an instrument in writing executed by both of the parties hereto.

(b) In each instance in which either State or CSXT is entitled to any benefit hereunder, State or CSXT, as the case may be, may: (i) extend the time for the performance of any of the obligations or other acts of the other party hereto; (ii) waive, in whole or in part, any inaccuracy in or breach of the representations, warranties and covenants of the other party hereto contained herein; and (iii) waive, in whole or in part, compliance with any of the terms and conditions of this Agreement by the other party hereto. Any agreement on the part of either State or CSXT to any such extension or waiver shall be valid only if set forth in an instrument in writing signed and delivered on behalf of such party.

Section 24. Notices.

(a) Any and all notices or other communications hereunder shall be in writing and shall be deemed given if delivered personally or through the United States Postal Service, certified mail postage prepaid, or received by facsimile telephone transmission or other electronic transmission (provided that an original of the electronically transmitted document is delivered within five (5) days after the document was electronically transmitted) upon the date so delivered to or received by the person to which it is addressed at the following addresses:

If to CSXT, to:

President
CSX Transportation, Inc
500 Water Street
Jacksonville, FL 32202

with a copy to:

Peter J. Shultz
CSX Corporation

Suite 560, National Place
1331 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

If to State:

Secretary of Transportation
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, FL 32399-0450

with copy to

State Public Transportation and Modal Administrator
Florida Department of Transportation
Haydon Burns Building
605 Suwannee Street
Tallahassee, FL 32399-0450

(b) Either party to this Agreement may provide changes to its address or addressees by furnishing a notice of such change to the other party to this Agreement, in the same manner as provided above for all other notices.

Section 25. Governing Law.

It is the intention of the parties hereto that the laws of the State of Florida shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto. Venue for any legal proceedings under this Agreement shall be in Leon County, Florida.

Section 26. Counterparts.

This Agreement may be executed in two or more counterparts, including counterparts

transmitted by facsimile or electronic transmission, each of which shall be an original as against any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the parties reflected hereon as signatories each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument

Section 27. Interpretation.

State and CSXT acknowledge that the language used in this Agreement is language developed and chosen by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein", "hereof", "hereby", "hereunder" and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph or section where they appear, unless the context otherwise requires. All words, terms and phrases used in this Agreement shall be construed in accordance with the generally applicable definition of such words, terms and phrases in the railroad industry, provided that in the event of any inconsistency between such definition and any definition set forth in Appendix A hereto, the latter shall govern. Whenever reference is made to a Section of this Agreement, such reference is to the Section as a whole, including all of the subsections and subparagraphs of such Section, unless the reference is expressly made to a particular subsection,

paragraph, or subparagraph of such Section.

Section 28. Exhibits.

All exhibits attached hereto are hereby incorporated by reference into, and made a part of, this Agreement.

Section 29. Entire Agreement.

This Agreement constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof, and supersedes all other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof, including, without limitation, that certain Non-binding Term Sheet dated as of August 2, 2006 and the Transition Agreement dated as of November 30, 2007

Section 30. Waiver.

Neither the failure to exercise nor any delay in exercising on the part of either party hereto any exception, reservation, right, privilege, license, remedy or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any exception, reservation, right, privilege, license, remedy or power under this Agreement preclude any other or further exercise of the same or of any other exception, reservation, right, privilege, license, remedy or power, nor shall any waiver of any exception, reservation, right, privilege, license, remedy or power with respect to any occurrence be construed as a waiver of such exception, reservation, right, privilege, license, remedy or power with respect to any other occurrence.

Section 31. Expenses.

Except to the extent otherwise expressly provided in this Agreement, any and all expenses incurred by either party hereto in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

Section 32. Further Assurances.

Both parties hereto shall exert their reasonable best efforts to fulfill all conditions and obligations of such party under this Agreement.

Section 33. Time of the Essence.

It is understood and agreed by the parties hereto that the prompt and timely performance of all obligations, responsibilities and conditions under this Agreement is of the essence of this Agreement.

Section 34. Performance of Agreement.

Except as is otherwise expressly provided in this Agreement, where any service is required or permitted of either party to this Agreement, the performance of such service may be delegated to such agent, contractor or employee as either such party may designate, provided, however, that nothing contained herein shall be construed as creating or diminishing any right in State or CSXT or to cause a transfer, release or discharge of any or all of State's or CSXT's obligations under this Agreement. State understands that a substantial portion of CSXT's employees are covered by collective bargaining agreements that govern the terms and conditions of their employment with CSXT, including, without

limitation, rates of pay and scope of work.

Section 35. Prohibition of Third Party Beneficiaries

Nothing herein expressed or implied is intended to or shall be construed to confer upon or to give any person, firm, partnership, corporation or governmental entity other than the parties hereto and their respective legal representatives, successors or assigns any right or benefit under or by reason of this Agreement; provided, however that nothing contained in the foregoing provision shall be construed to limit or restrict the enjoyment and use of the rights contained in Sections 7 and 8 of this Agreement and the Exhibits hereto or any other party's(ies') enjoyment and use of any and all of the rights that may be granted or conferred to such other party(ies) by contract(s), agreement(s), lease(s) license(s) or easement(s) entered into between State or CSXT and such other party(ies) pursuant to Sections 7 and 8 hereof and the Exhibits hereto.

Section 36. Term.

(a) This Agreement shall become effective on the Commencement Date, and shall continue in effect until such time as CSXT, its successors or assigns, secures and exercises appropriate regulatory authority to abandon and/or discontinue all Rail Freight Service on the State Property, or in the event that such authority is not required, until such time as CSXT, its successors or assigns, gives six (6) months' prior written notice of termination of this Agreement. It is understood by the parties hereto that this Agreement may be terminated, in part, upon the securing of the aforesaid authority or the giving of the aforesaid notice, as the case may be, as it pertains to a portion of the State Property

(b) Termination of this Agreement, in whole or in part, shall not relieve or release either

party hereto from any obligation assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to the termination hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of termination, in whole or in part, is expressly accorded either or both of the parties hereto.

Section 37. Successors and Assigns.

(a) This Agreement and all of its terms, conditions, covenants, rights and obligations herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, subject to the following: at any time during the term of this Agreement: (i) State shall not convey any interest in the State Property underlying the CSXT Easement to any person, firm, partnership, corporation or governmental entity unless State has first complied with Section 38 of this Agreement and, (ii) as a condition to such conveyance, this Agreement is assigned to the party acquiring such property to the extent of the conveyance so involved CSXT shall not transfer the CSXT Easement, in whole or in part, to any person, firm, partnership, corporation or governmental entity unless CSXT shall have first obtained the prior written consent of State (which consent shall not be unreasonably withheld, conditioned or delayed) and as a condition to such transfer, this Agreement is assigned to the party acquiring such Easement to the extent of the transfer so involved.

(b) The provisions of this Agreement pertaining to State's prior consent to any assignment by CSXT shall not apply to any assignment by CSXT of this Agreement, in whole or in part, or any of CSXT's rights, interests or obligations hereunder to any person, firm, partnership or corporation now or hereafter affiliated with CSXT; provided, however, that such affiliated entity, its successors and assigns, shall take such assignment subject to the aforesaid provisions pertaining to State's right of

consent to any subsequent assignment (which consent shall not be unreasonably withheld, conditioned or delayed); and, provided, further, that CSXT unconditionally guarantees to State the performance of all obligations of CSXT under this Agreement by any such affiliate. The provisions of this Agreement pertaining to CSXT's right of first refusal shall not apply to any assignment by State of this Agreement, in whole or in part, or any of State's rights, interests or obligations hereunder to any other agency of State or local governmental agency in the State of Florida; provided, however, that such agency, its successors and assigns, shall take such assignment subject to the aforesaid provisions pertaining to CSXT's right of first refusal to the extent applicable at the time of such assignment; and, provided, further, that State unconditionally guarantees to CSXT the performance of all obligations of State under this Agreement by any such agency or any other assignee hereunder.

(c) Except as is otherwise provided in Subsection (d) hereof, any assignment of this Agreement, in whole or in part, by CSXT, its successors or assigns, shall forever release and discharge CSXT: (i) from the performance of its obligations and covenants under this Agreement, or with respect to the part hereof so assigned, as the case may be, from and after the date of such assignment, and (ii) from any liability, cost and expense arising out of or connected with this Agreement, or with respect to the part thereof so assigned, as the case may be, from and after the date of such assignment; provided, however, that any such assignment shall be made in strict accordance with and subject to the provisions set forth in this Section 37 relating to the assignment of this Agreement, including, without limitation, the provisions governing the State's right to consent to such assignment, provided such consent may not be unreasonably withheld, conditioned or delayed.

(d) Assignment of this Agreement, in whole or in part, shall not relieve or release either party hereto from any obligation assumed or from any liability which may have arisen or been incurred

by such party under the terms of this Agreement prior to the assignment hereof. The foregoing provision shall apply whether or not it is so expressly stated elsewhere in this Agreement where a right of assignment, in whole or in part, is expressly accorded either or both parties.

Section 38. CSXT's Right of First Refusal.

(a) If at any time or from time to time during the term of this Agreement, State receives from a ready, willing and able purchaser a bona fide written offer acceptable to State for the acquisition of State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement, in whole or in part, then State shall formally notify CSXT of such offer and provide CSXT with a true copy of such offer. (If State believes that negotiations with a prospective offeror may lead to State's receipt of a bona fide offer for the aforesaid acquisition, then State shall advise CSXT to that effect prior to State's giving CSXT the aforesaid formal notification.) As a consequence of State's acceptance of such offer, CSXT shall have a right of first refusal to acquire State's rights, interests and obligations in the property underlying the CSXT Easement and this Agreement, upon the same terms and conditions, including, without limitation, compensation, set forth in the aforesaid bona fide offer acceptable to State. (In the event that the aforesaid offer's terms and conditions include an exchange of property in lieu of cash, then a cash equivalent acceptable to the offeror and State shall also be set forth in said bona fide offer.) CSXT shall exercise its aforesaid right of first refusal herein granted by giving written notice thereof to State within forty-five (45) days of State's aforesaid formal notice to CSXT. CSXT's aforesaid right of first refusal shall be subject to any preferential right(s) for the acquisition of State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement that may exist from time to time during the term of this Agreement under any and all

federal, state or local law(s).

(b) In the event that CSXT declines or fails, for any reason, to exercise its aforesaid right of first refusal, or in the event that CSXT exercises said right but is unable, for any reason, to consummate the acquisition and/or assignment in accordance with the terms and conditions of the bona fide offer, then CSXT's aforesaid right of first refusal as it pertains to such offer shall automatically terminate and be of no further force and effect.

(c) CSXT's aforesaid right of first refusal shall not apply to any transfer or assignment of State's rights, interests and obligations in the State Property underlying the CSXT Easement and this Agreement, in whole or in part, to any other agency of the State of Florida or local governmental agency in the State of Florida; provided, however, that such agency, its successors and assigns, shall take such transfer or assignment subject to the aforesaid provisions pertaining to CSXT's right of first refusal to the extent applicable at the time of such transfer or assignment; and, provided, further, that State unconditionally guarantees to CSXT the performance of all obligations of State under this Agreement by any such agency.

(d) The rights, interests and obligations of State and CSXT under this Section 38 shall be in addition to their respective rights, interests and obligations under Section 11 hereof.

Section 39. Incorporation of Recitals.

The recitals to this Agreement are true and correct and are hereby incorporated herein.

[Signature page follows]

Execution Copy

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, duly attested, to be hereunto affixed as of the day and year first above written.

ATTEST

Lisa Mancini
Lisa Mancini

CSX TRANSPORTATION, INC.

By: Peter J Shudtz
Peter J Shudtz
Its Authorized Agent

ATTEST

[Signature]

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

By: nowave down

THE AFOREMENTIONED CONTRACT
HAS BEEN REVIEWED AND APPROVED
AS TO FORM

FUNDS ARE APPROVED AND
AVAILABLE

APPENDIX A

**Definitions Common to Central Florida Operating and Management Agreement,
Transition Agreement and Master Projects Agreement**

"AAR" shall mean the Association of American Railroads.

"Amtrak" shall mean the National Railroad Passenger Corporation, its successors and assigns.

"Amtrak Agreement" or **"Amtrak-CSXT Agreement"** shall mean the Agreement dated June 1, 1999, and all supplements thereto, such agreement and supplements being between CSXT and Amtrak.

"Amtrak-State Agreement" shall mean an agreement, if any, entered into by Amtrak and State pertaining to Intercity Rail Passenger Service on the State Property.

"Ancillary Agreements" shall have the meaning given to it in Section 14.01 of the Contract.

"Central Florida Commuter Rail Transit System" or **"Commuter Rail System"** shall mean the Fixed-Guideway Transportation System developed, implemented, operated and maintained by State that will run from DeLand in the County of Volusia through Seminole County and Orange County (including the City of Orlando) to Pomciana in Osceola County on the State Property.

"CFOMA" shall mean that certain Central Florida Operating and Management Agreement dated as of November 30, 2007 by and between State and CSXT.

"Closing Date" shall mean the date upon which the conveyance of the State Property from CSXT to State is effectuated in accordance with the Contract.

"Commencement Date" shall be the date upon which the CFOMA shall become

effective.

"Commuter Rail Service" shall mean the transportation of commuters and other passengers by rail provided by State or its assignee or designee.

"Contract" shall mean that certain Contract For Sale and Purchase dated as of November 30, 2007 by and between State and CSXT.

"CSXT" shall mean CSX Transportation, Inc., a Virginia corporation.

"CSXT Easement" shall have the meaning given to it in the Deed attached as Exhibit 4 of the Contract.

"CSXT Property" shall mean all of the rights-of-way and associated property, and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures located on such rights-of-way and property that connect with the State Property and are owned, controlled or used by CSXT, being properties contiguous to the State Property that were not acquired by State under the Contract.

"Deed" shall mean the deed appearing as Exhibit 4 of the Contract.

"Effective Date" shall (in any respective agreement) mean the date the agreement becomes effective.

"EOT Unit" shall mean a caboose or other non-revenue rail car in a freight train for the use of the train's crew during certain switching operations.

"Execution Date" shall mean (in each respective agreement) the date on which the agreement is executed by all parties.

"FCEN" shall mean the Florida Central Railroad Company, its successors and assigns, which as of the Execution Date operates over a portion of the State Property pursuant to certain

agreements between CSXT and FCEN but shall, as of the Commencement Date, have entered into a separate agreement with State

"Fee Commencement Date" shall mean the date that CSXT shall begin paying the Usage Fee as provided in Subsection 5(a)(3) of the Transition Agreement.

"Fixed Fee" shall have the meaning given to it in Subsection 2(a) of the CFOMA.

"Fixed-Guideway Transportation System" shall have the meaning given to it in Subsection 341.031(2), Florida Statutes.

"Force Majeure" shall have the meaning given to it in Section 22 of the CFOMA.

"FRA" shall mean the Federal Railroad Administration.

"FTA" shall mean the Federal Transit Administration.

"Incidental Use" shall have the meaning given to it in Subsection 19(a)(ii) of the CFOMA.

"Intercity Rail Passenger Service" shall mean the transportation of intercity passengers by rail provided by Amtrak, or as may be provided by others, on the State Property.

"Master Projects Agreement" shall mean that certain agreement to be entered into between State and CSXT.

"Non-Binding Consolidated Term Sheet" shall mean that certain Non-Binding Consolidated Term Sheet entered into by State and CSXT and dated as of August 2, 2006

"Rail Commuter Passenger(s)" shall have the meaning given to it in Subsection 19(a)(i) of the CFOMA.

"Rail Freight Service" shall mean the transportation by rail of property and movable articles of every kind, character and description over the State Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities

located along the State Property, and supporting activities, over the State Property pursuant to the CSXT Easement and the CFOMA, but excluding detour movements of other railroads permitted by State pursuant to Subsection 3(m) of the CFOMA.

“Railroad Operations” shall have the meaning given to it in Subsection 1(a) of the CFOMA.

“Reserved Easement” shall have the meaning given to it in the Deed.

“Service Plan” shall mean the CFCRT Freight Service Plan (Revision 5) attached as **Exhibit 1** to the CFOMA.

“Sidetrack” shall mean tracks on the State Property, owned by CSXT or a third party, approximately one hundred and fifty feet (150’) from or beyond the switch in the main line (with precise cut points to be mutually agreed to), for which State shall have no financial obligation and which are used exclusively by CSXT to provide Rail Freight Service to industries, customers and facilities located along the State Property.

“Sidetrack Agreement” shall mean any agreement between CSXT and a shipper, recipient, and/or other user of Rail Freight Services over a Sidetrack, that governs the ownership, construction, maintenance, repair, and use of a Sidetrack

“State” shall mean the State of Florida Department of Transportation

“State Property” shall mean all of the rights-of-way and associated property and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures thereto, being all of the properties acquired by State under the Contract (the real estate for which is described in **Exhibit 1** to the Contract) or acquired by State and used by State for the placement of railroad tracks for Railroad Operations.

"STB" shall mean the federal Surface Transportation Board.

"Transition Agreement" shall mean that certain Transition Agreement dated as of November 30, 2007 by and between State and CSXT.

"UMLER" shall mean the Uniform Machine Language Equipment Register.

"Usage Fee" shall have the meaning given to it in Subsection 2(a) of the CFOMA.

"Variable Fee" shall have the meaning given to it in Subsection 2(a) of the CFOMA.

#4713077_v16

Exhibits

Exhibit 1 CFCRT Freight Service Plan (Revision 5)

#4713077_v14

CFCRT Freight Service Plan (Revision 5) October, 2006

The following Freight Operations Service Plan was developed jointly by FDOT and CSXT up to revision 4 and reflects the implementation of the CFCRT corridor capital upgrades to the A – Line for commuter rail service and the relocation of through freights to the upgraded S - Line.

Revision 5 reflects the additional following mutually agreed to changes and modifies the plan with the relocation of the K928/K929 Fly Ash trains to the S– Line, the deletion of a proposed local A800 for deliveries to Harwood Brick and the termination of the Q455/Q455 train from Barberville at Rand Yard rather than Taft Yard and the introduction of new local train transfer runs replacing truncated Q455/6 south of Rand Yard to move cars between Rand and Taft yards.

Section 1: Local/Switcher Operating Plan

- Typical Train Make-up – 1 Switcher Locomotive (1500/3000 HP) and 10 - 15 cars 60 tons/60 feet per car (600/900 ton train of 600/900 feet length)

A766 - Two operating patterns, pattern 1 reflects operation on Mon, Wed and Fri and pattern 2 reflects operation on Tue and Thu

A766 – Pattern 1 – Mon, Wed and Fri

- On duty at 7 AM at Rand
- Two hours and 20 minutes at Rand for switching and to make up its trains
- Southbound shove move - depart Rand at 9:20 AM from Blvd Track and using crossovers at 765.7 – 765.9 run on main track to MP 767.7.
- Train occupies the main for one hour at MP 767.7 to switch Sunlight Foods (Sunlight Foods switch is at 767.4).
- Northbound pull move - depart from MP 767.7 and go to DeLand Spur.
- Work industries on DeLand spur for 3 hours (clear off the main) and R/A the train for southbound move.
- Southbound pull move on the main from Deland spur connection to Blvd Track Rand yard.
- Switch Transflo for 1 hour
- End of duty.

A766 – Pattern 2 – Tue and Thu

- On duty at 7 AM at Rand

- Two hours and 20 minutes at Rand for switching and to make up its trains
- Southbound shove move on the main - depart Rand at 9:20 AM from Blvd Track and using crossovers at 765.7 – 765.9 run on main track to MP 767.7.
- Train occupies the main for one hour at MP 767.7 to switch Sunlight Foods (Sunlight Foods switch is at 767.4).
- Northbound pull move - depart from MP 767.7 and go to Blvd Track
- Pull down into yard, run-around train, pull southward from Boulevard Track to main track (HT XO) and pull into Aloma Spur.
- Stay on Aloma Spur switching industries for 2 hrs 30 minutes clear of main.
- Northbound pull move from Aloma spur (after being away for 2:30 hours) to clear north switch at Sanford approx MP 763.5 and stop
- Southbound shove move from MP 763.5 to Blvd track into Rand Yard.
- Switch Transflo for 1 hour.

A775- Two operating patterns, pattern 1 Mon, Wed and Fri and pattern 2 Tue and Thu

A775 – Pattern 1 – Mon, Wed and Fri

- On duty at 7 PM at Taft – Manifest yard
- One and a half hours at Taft for switching and to make up its trains
- Northbound pull move from Taft to MP 795.5 - depart Taft at – 8:30 PM from manifest yard.
- Train occupies the main for one hour at MP 795.5 to switch Inland Container (Inland Container switch is at MP 795.4).
- Northbound pull move - depart from MP 795.5 and go to MP 793.5 and stop south of switch to Boise Cascade 1 & 2
- Train occupies the main for one hour at MP 793.5 to switch Boise Cascade 1 & 2 (Boise Cascade 1 & 2 switch is at 793.4/793.6)
- Northbound pull move from MP 793.5 to MP 792.6 to work Southern Warehouse North
- Train occupies the main for one hour at MP 792.6 to switch Southern Warehouse North (Southern Warehouse North switch is at MP 792.5)
- Northbound pull move from MP 792.6 over crossover at MP 792.4 from main to service track and stop after clearing switch.
- Southbound shove move on service track into Pine Loch yard
- Work Southern Warehouse West for one hour and then pull into Kaley Yard.
- Work Great Western Meat In (Yard Track #4) in Kaley Yard for one hour and leave train at Kaley
- Southbound pull move with industry cars over the crossover at MP 792.4 to MP 792.8
- Train occupies the main for one hour at MP 792.8 to switch Southern Warehouse South (Southern Warehouse south switch is at MP 793.0)
- Northbound shove move over the crossover into Kaley Yard. In Kaley for 45 minutes.
- Return Southbound pull move from Kaley to Taft manifest yard.

Deleted Harwood Brick Train A800

A775 – Pattern 2 – Tue and Thu

- On duty at 7 PM at Taft – Manifest yard
- One and a half hours at Taft for switching and to make up its trains
- Northbound pull move from Taft to MP 793.5 - depart Taft at 8:30 PM from manifest yard.
- Train occupies the main for one hour at MP 793.5 to switch Boise Cascade 1 & 2 (Boise Cascade 1 & 2 switch is at 793.4/793.6)
- Northbound pull move from MP 793.5 to MP 792.6 to work Southern Warehouse North
- Train occupies the main for one hour at MP 792.6 to switch Southern Warehouse North (Southern Warehouse North switch is at MP 792.5)
- Northbound pull move from MP 792.6 over crossover at MP 792.4 from main to service track and stop after clearing switch.
- Southbound shove move on service track into Pine Loch yard
- Work Southern Warehouse west for one hour and then pull into Kaley Yard.
- Train/switcher is in Kaley Yard for 3 to 4 hours to work Great Western Meat (one hour), Commercial Iron (1 hour) and CKS Packaging (1 hour).
- About 45 minutes to assemble train and then pull from Kaley and return to Taft with train

A779 - Two operating patterns, Pattern 1 reflects operation on Mon, Wed and Fri and Pattern 2 reflects operation on Tue and Thu

A779 – Pattern 1 – Mon, Wed and Fri

- On duty at 10 AM at Taft Yard
- One hour at Taft for switching and to make up its train
- Southbound pull move - depart Taft at 11 AM from manifest yard (yard south lead switch is at MP 797.2/792.3) to MP 798.2
- Northbound push move over crossover at approx MP 797.8 from trk # 2 to trk # 1 and then to the TOFC yard. This transfer move from manifest to TOFC yard, located on the opposite side of the main, takes about 30 minutes.
- Switcher works – 8/9 hours in TOFC yard.
- The reverse transfer move from TOFC to manifest yard occurs at 20:00 hours and also takes about 30 minutes.

A779 – Pattern 2 – Tue and Thu

- On duty at – 10 AM at Taft Yard
- Two and half hours at Taft for switching and to make up its trains

- Southbound pull move - depart Taft at 12:30 hrs from manifest yard (yard lead south switch at MP 797.2/792.3) to MP 806.6 trk # 2.
- Train occupies the # 2 main for one hour at MP 806.6 to switch Team Track (Team Track switch is at 806.6).
- Southbound pull move on # 2 main - depart from MP 806.6 and go off the main at at MP 813.8 to Poinciana Industrial Track spur.
- Work industry on Poinciana Industrial Track spur for 6 hours (clear off the main) and R/A the train for northbound move.
- Northbound pull move from MP 813.8, trk #2 to MP 805.0, trk #1 to work at 84 Lumber.
- Train occupies the # 1 main for one hour at MP 805.0 to switch 84 Lumber (84 Lumber switch is at 805.0).
- Northbound pull move on the main from MP 805.0, trk #1 to Taft yard.

A784 – Mon, Tue and Wed

- On duty at 8 PM (20:00 hrs) at Taft Yard
- One hour at Taft for switching and to make up its train
- Southbound pull move - depart Taft at 21:00 hrs from manifest yard (yard south lead switch is at MP 797.2/792.3) to MP 798.2
- Northbound push move over crossover at approx MP 797.8 from trk # 2 to trk # 1 and then to the TOFC yard. This transfer move from manifest to TOFC yard, located on the opposite side of the main, takes about 30 minutes.
- Switcher works 7 / 8 hours in TOFC yard.
- The reverse transfer move from TOFC to manifest yard occurs at 05:00 hours and also takes about 30 minutes.

A786 – Mon, Tue, Wed, Thu and Fri

- On duty at 11 PM (23:00 hrs) at Taft Yard
- One hour at Taft for switching and to make up its train
- Southbound/westbound pull move - depart Taft at 24:00 hrs from manifest yard from yard track to Sexton Branch (does not require use of the main).
- Stays on Sexton Spur about 4 hours
- Do SO/PU at yard .. one hour.
- Southbound pull move from Taft yard MP 797.3 to MP 799.2 on main track #1 to go to Regency Park spur
- Work industry on the Regency Park spur for 4:00 hours and return to Taft yard
- Northbound move on main track #1 from MP 799.2 to Taft yard at around 09:00 hours.
- Works in yard 45 minutes before going off duty

A798 – Tue and Fri

- On duty at 22:00 at Taft Yard. Works main track locations AM Wednesday and Saturday
- Two hours at Taft for switching and to make up its train
- Southbound/westbound shove move - depart Taft at 00::00 hrs from manifest yard to MP 797.5 to switch Amerigas.
- Train occupies the # 1 main for one hour at MP 797.5 to switch Amerigas (Amerigas switch is at 797.5 off trk # 1).
- Northbound move from MP 797.5, trk # 1 to MP 796.2 trk # 2 to work Constar
- Switcher currently works off the service track that will become number 2 main. Train occupies the # 2 main for a total period of 3 hours, one hour at MP 796 2 to switch Constar, one hour to switch Chemical Central and one hour to switch Howard Fertilizer.
- Must run-around train using mains to work Constar
- To cross back into the manifest yard - northbound move to the single track section to clear the switch at MP 796.0 and shove move into the manifest yard at the north end.

A776 and A 777 are Taft yard switchers.. and do not occupy the main.

NEW TRANSFER RUNS REPLACING TRUNCATED Q455/6 SOUTH OF RAND YARD

A455a - Mon, Tue, Wed, Thu, and Fri

Loco	HP	Cars	ft	tons
1	4000	45	2250	3600

Train Starts in Rand Yard, off the main, at 11.30, builds train and performs brake test.

Train departs Rand Yard at 13.00 +/- 15 minutes and proceeds southbound to Taft Yard.

Train occupies #1 Main Track at Taft for 30 minutes to put the train in short yard tracks.

A455b – Mon, Tue, Wed, Thu, and Fri

Loco	HP	Cars	ft	tons
1	4000	45	2250	3600

Train starts at Rand Yard, off the main, at 01:30 AM, builds train and performs brake test for 01:30 hours

Train departs Rand Yard between 03:00 AM and 03:30 AM and proceeds southbound to Taft Yard.

Train occupies #1 Main Track at Taft for 30 minutes to put the train in short yard tracks

A456a – Mon, Tue, Wed, Thu, and Fri

Loco	HP	Cars	ft	tons
1	4000	45	2250	3600

Train starts between Midnight and 00:30 AM.

Train occupies Main Track #1 at Taft to build the train and perform brake test for 01:30 hours before departing for Rand Yard before 02 00 AM.

Train arrives at Rand Yard by 03:00 AM, leaves Main, and terminates.

A456b – Mon, Tue, Wed, Thu, and Fri

Loco	HP	Cars	ft	tons
1	4000	45	2250	3600

Train starts between 02:00 AM and 02:30 AM.

Train occupies Main Track #1 at Taft to build the train and brake test for 01:30 hours before departing by 04:00 AM for Rand Yard.

Train arrives at Rand Yard by 05:00 AM, leaves Main, and terminates

O682 – Mon, Tue, Wed, Thu and Fri

- **On duty at 7 PM at Tampa. Transfer move between Tampa and Taft.**
- **Local enters simulation at Davenport at 11:45 PM**
- **Northbound pull move from Davenport to Taft manifest yard.**
- **Works Taft yard to SO/PU for 2 hours**
- **Southbound pull move from Taft to Davenport after working for 2 hours at Taft**

Z915 FCEN – Mon, Tue, Wed, Thu and Fri

- **Local enters simulation at MP 790 at 21:00 hours at FCEN connection off track #1 at MP 790.0 (Robinson Street)**
- **Southbound pull move from MP 790.0 to Taft manifest yard.**
- **Works Taft yard to SO/PU for 2 hours**
- **Northbound return move from Taft manifest yard to MP 790 0. Leaves Taft around 23:30 and is clear of the main track by about 24:00 hours**

Section 2: Rock/Fly Ash Trains Operating Plan

Rock Trains

- Typical Train Make-up -- HP/ton ratio 0.8 - 1.0 loads and 1.5 - 2.0 to hp/ton for empty 70 cars per train 115 tons/55 feet per car (8450 ton train of 4000 feet length)

K791/K792 – 4/4 trips per week

K791 (Load) – Mon, Tue, Wed and Thu

- Train enters simulation at Barberville MP 738. 7 at 22:00 hrs
- Southbound pull move from MP 738 7 to Benson Junction, 761 2
- Train occupies the # 2 main during the switching operation (about 1 hr). Cut 35 cars pull 35 cars south for tail end to clear switch for shove move into the Conrad Yelvington
- Locomotive return, hook up, brake test etc. for the southbound move.
- Southbound pull move with remaining 35 cars to Kaley Yard.
- Train occupies the # 1 main during the switching operation (about 1 hr) and shove move into Conrad Yelvington.

K792 (Empty) – Tue, Wed, Thu and Fri

- Train enters simulation at Kaley Yard MP 791 2 at 13 hrs on Tue and Thu and 22 hrs departure on Wed and Fri
- Train occupies the # 1 main during the switching operation (about 30 mins) and for locos to run around the train for the pull move.
- Northbound pull move from Kaley yard, MP 791.2 to Benson Junction, MP 760.5, track # 2
- Locomotives P/U 35 empty cars from Conrad Yelvington Train occupies the # 2 during the switching operation (about 1 hour).
- Locomotive return with cut of cars, hook up, brake test etc, for the northbound move.
- Northbound pull move from Benson Junction, MP 760.5 , track #2 to Barberville

K940/K941 – 3/2 trips per week

K940 (Load) – Mon, Wed and Fri

- Train enters simulation at Davenport MP 825 at –10AM
- Northbound pull move from MP 825 to TaftYard, 796.5

- Train is in the yard during the switching operation (about one hour). Leave a cut of 35 cars in the yard. .
- Hold train in the yard till 13:00 for northbound pull. Northbound pull move with remaining 35 cars to Sanford Yard.

K941 (Empty) – Tue and Thu

- On duty at 22 hrs at Rand Yard and dwell of hour
- Train departs Rand Yard, MP 765 at 23 hrs
- Southbound pull move from Rand Yard to Taft Yard, MP 760.5,
- Locomotives P/U 35 empty cars from Taft Yard. Train is in the yard during the switching operation (about 1 hour).
- Locomotive return with cut of cars, hook up, brake test etc, for the southbound move.
- Southbound pull move from Taft Yard to Davenport.

K948/K947 – Florida Rock 3/3 trips per week

K948 (Load) – Mon, Wed and Fri

- Train enters simulation at Davenport MP 825 at 9AM
- Northbound pull move from MP 825 to Taft Yard, MP 796.5 .
- Train enters the yard from the south end and pulls up to the north end.
- Shove move from the yard track to the Sexton Branch.

K947 (Empty) – Mon, Tue and Thu

- On duty at 21:00 hrs at Taft Yard
- Two hours to pull empties from Sexton Brach - using the yard track, R/A train in the Taft yard for southbound move.
- Southbound pull move/departure at 23:00 hrs from Taft Yard to Davenport

Fly Ash

K928/K929 – Fly Ash Moved to S - Line

Section 3: Freight Trains Operating Plan

Intermodal

Q177 – Intermodal - train shifted to S-Line

Q178 - Intermodal - train shifted to S-Line

Manifest

Q455– Manifest - Barberville to Rand Yard. Arrival time at Barberville

Mon	Tue	Wed	Thu	Fri	Loco	HP	Cars	ft	tons
14:02	12:32	13:02	10:00	10:30	2	8000	90	5500	7200

Train leaves the main at Rand Yard and terminates.

Q456 - Manifest - Rand Yard to Barberville Train start time at Rand.

Mon	Tue	Wed	Thu	Fri	Loco	HP	Cars	ft	tons
04:24	03:39	03:54	04:09	03:24					

Train Builds at Rand Yard for 01.30 hours

Train depart time from Rand:

Mon	Tue	Wed	Thu	Fri
05:54	05:09	05:24	05:39	04:54

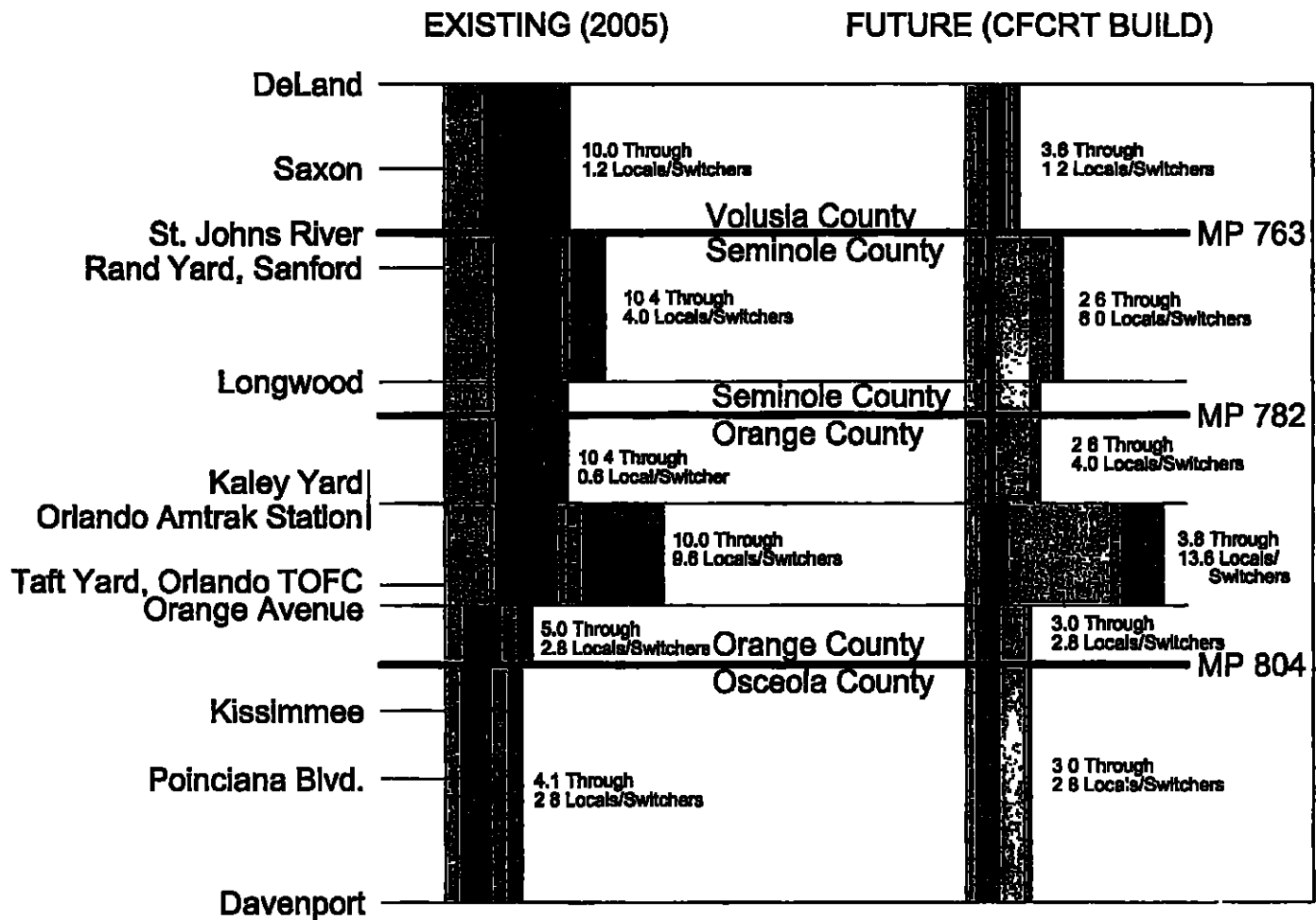
Coal

N170- Load Coal – Shows up at 02:00 AM with +/- 2 hrs variability at Davenport for Stanton Connection.

N171- Empty Coal –Return move from the power plant after 9 hrs with +/- 1 hr variability.

	Loco	HP	Cars	ft	tons
N170- Load Coal	2	8800	95	5200	13200
N171- Empty Coal	1	4400	95	5200	2500

Revisions on December 2, December 6, December 9, and December 14, 2005



CSXT "A" LINE

Daily Weekday Through & Local/Switcher Freight
By Location and Time of Day

Existing (2005) vs. Future (CFCRT Build)

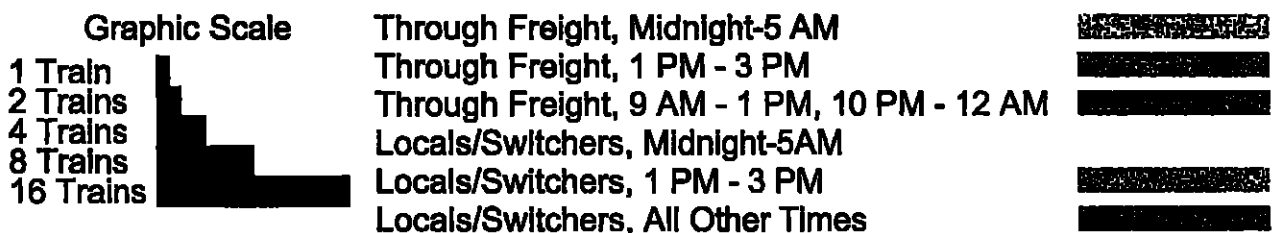


EXHIBIT 3

Execution Copy

TRANSITION AGREEMENT

**Between State of Florida Department of Transportation
and CSX Transportation, Inc.**

**Pertaining to the Central Florida Rail Corridor, a Line of
Railroad Between Deland, Florida, and Poinciana, Florida,
and Related Properties**

Dated November 30, 2007

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TRANSITION AGREEMENT

THIS TRANSITION AGREEMENT (this "Agreement") made as of the 30th day of November, 2007 (the "Effective Date") by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT"). Except as otherwise expressly provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A, "Central Florida Rail Corridor Definitions" and Appendix B, "Transition Agreement Definitions:"

WHEREAS, by Contract For Sale and Purchase dated as of November 30, 2007 (hereinafter referred to as "Contract"), State agreed to acquire and CSXT agreed to sell certain properties therein described (comprising a portion of CSXT's A-Line) upon which railroad freight, commuter, and other passenger rail services are to be conducted; and

WHEREAS, under such Contract, upon satisfaction of the conditions precedent, CSXT will convey and transfer to the State, on a Closing Date to be determined, all of CSXT's right, title and interest in the State Property with CSXT retaining and not transferring to State those perpetual easements (the "CSXT Easement" and the "Reserved Easement") over the properties acquired by State as each perpetual easement is described in the Deed; and

WHEREAS, by the Central Florida Operating and Management Agreement dated as of November 30, 2007 (hereinafter referred to as "CFOMA"), State and CSXT established the terms and conditions that will govern the conduct of Railroad Operations over the State Property

in a manner consistent with the other uses of the State Property, and expressing the mutual intention of the parties hereto that State shall not obtain nor assume any common carrier obligation and that CSXT shall remain, and State shall not become, the rail carrier subject to the Interstate Commerce Act, the ICC Termination Act of 1995, the Railway Labor Act, or any other federal law as enacted or revised, relating to the provision of railroad freight transportation on the State Property; and

WHEREAS, the parties have agreed to develop, design, construct, and implement, those certain projects to be specified in a Master Projects Agreement to be entered into by State and CSXT, which projects are designed, among other things, to improve Florida's transportation systems, to alleviate congestion and create additional capacity on other CSXT rail lines in the State of Florida, to support infrastructure for the Terminal Facility between MP SX 828.8 and MP SX 834.5 to accommodate freight service on the S-Line and to allow for the transfer of certain freight trains from the State Property to the S-Line to allow for the more efficient provision of Railroad Operations on the State Property, and

WHEREAS, upon construction and operation of appropriate substitute facilities and to the extent reasonably practicable at a mutually agreeable time, CSXT will re-route certain freight trains, including, but not limited to the coal and flyash trains identified in Section 7(a) of this Agreement, to access the State Property from the South so as to facilitate State construction activities on the State Property during the Transition Period; and

WHEREAS, CSXT and State have agreed that upon the State Management Date, CSXT shall transfer to State, and State shall implement and be responsible for the operation, maintenance and dispatch of all Railroad Operations on the State Property, with the further

agreement that CSXT shall perform all dispatching responsibilities during the initial construction phase pursuant to a contract with State.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS:

Section 1. Transition.

(a) This Transition Agreement shall govern the conduct of Railroad Operations on and the maintenance of the State Property during the Transition Period. During said Transition Period the following Sections of CFOMA, except as otherwise noted below, shall be as effective and operational as if fully set forth herein, notwithstanding that the Commencement Date of CFOMA has not occurred.

Section 3. OPERATION AND MANAGEMENT, except to the extent said CFOMA Section 3 is inconsistent or conflicts with this Agreement, in which event, this Agreement shall have control over the inconsistent or conflicting provisions.

Section 4. MAINTENANCE.

Section 5. ADDITIONS, BETTERMENTS, RETIREMENTS AND ALTERATIONS.

Section 6. REVENUES.

Section 7. EXISTING AGREEMENTS PERTAINING TO THE STATE PROPERTY AND THE CSXT PROPERTY.

Section 8. FUTURE AGREEMENTS PERTAINING TO AND USES OF THE STATE PROPERTY.

Section 9. TAXES, ASSESSMENTS AND UTILITIES.

Section 10. CASUALTY LOSSES.

- Section 11. ABANDONMENT AND/OR DISCONTINUANCE.**
- Section 12. COMPLIANCE WITH LAWS.**
- Section 13. LIENS AND CHARGES.**
- Section 14. EMINENT DOMAIN.**
- Section 15. PAYMENT OF BILLS AND RECORDS.**
- Section 16. DEFAULT AND BREACH,** except that the reference therein to operating windows in Subsection 3(i) of CFOMA shall be read to be a reference to the operating requirements relating to operating windows, Curfews, or other restrictions on the movement of rail traffic as provided in Section 4 hereof.
- Section 17. DISPUTE RESOLUTION AND ARBITRATION**
- Section 18. CLEARING OF WRECKS.**
- Section 19. LIABILITY,** except that the additional provisions of Section 9 hereof shall apply during the Transition Period.
- Section 20. INVESTIGATION.**
- Section 21. INSURANCE,** except to the extent said CFOMA Section 21 is inconsistent or conflicts with Section 9 hereof, in which event, said Section 9 shall have control over the inconsistent or conflicting provisions.
- Section 22. FORCE MAJEURE.**
- Section 23. EXTENSION, WAIVER AND AMENDMENT.**
- Section 24. NOTICES.**
- Section 25. GOVERNING LAW.**
- Section 26. COUNTERPARTS.**

Section 27. INTERPRETATION.

Section 28. EXHIBITS.

Section 29. ENTIRE AGREEMENT.

Section 30. WAIVER.

Section 31. EXPENSES.

Section 32. FURTHER ASSURANCES.

Section 33. TIME OF THE ESSENCE.

Section 34. PERFORMANCE OF AGREEMENT.

Section 35. PROHIBITION OF THIRD PARTY BENEFICIARIES.

Section 36. TERM, except that the term of this Transition Agreement shall commence on the Effective Date.

Section 37. SUCCESSORS AND ASSIGNS, except that neither party hereto may assign this Transition Agreement without also simultaneously assigning CFOMA to the same assignee.

Section 38. CSXT'S RIGHT OF FIRST REFUSAL.

Section 39. INCORPORATION OF RECITALS

(b) Wherever in any above-identified Section of CFOMA there is a reference to "Commencement Date," such reference, for the purposes of this Agreement, shall mean the State Management Date.

(c) Wherever in any above-identified Section of CFOMA there is a reference to "this Agreement," or "herein," such reference, for the purposes of this Agreement, shall refer to this Transition Agreement.

(d) CSXT shall provide for the transfer to State of control and performance of dispatch and maintenance on the State Property as of State Management Date.

Section 2. Important Dates; Schedule; Milestones.

(a) The parties agree that the following milestones represent critical events that must be achieved on a timely basis in order for efficient Rail Freight Service, Commuter Rail Service, and Intercity Rail Passenger Service to be provided on the State Property:

<i>Milestone</i>	<i>Date to be Achieved</i>
(1) Funding of final design, permit applications and long lead items re S-Line improvements.	10/31/07
(2) State procurement of design-build-maintain contractors.	05/01/08
(3) CSXT target date for the Development Order for the Terminal Facility.	06/30/08
(4) Closing Date and State Management Date.	08/30/08
(5) State procurement of temporary dispatch services.	08/30/08
(6) Anticipated State procurement of permanent dispatch services	10/01/09
(7) CSXT target date for the completion of the Terminal Facility.	06/30/10
(8) Commissioning and testing of Commuter Rail System.	06/30/10
(9) Revenue Operation Date.	06/30/10

(b) The parties agree that within thirty (30) days after the Effective Date, CSXT and State shall jointly develop a master schedule that delineates each and every item or activity of the design, regulatory compliance, engineering, construction, and completion of work (including timelines) that is critical for timely compliance with the above milestones, and shall review, verify, and/or modify said schedule no less than monthly to ensure that it remains current and accurate, provided, however, that neither party represents or warrants that any of the aforementioned milestones will be achieved, nor waives any condition to the effectiveness of the Contract or any Ancillary Agreement as set forth in the Contract or such Ancillary Agreement

(c) Within one (1) month of the State Management Date, State shall have satisfied the

following.

- (1) Install "No Trespassing Signs" as appropriate.
- (2) Replace all padlocks on signal appliances.
- (3) Re-Stencil current CSXT signs to identify the Florida Department of Transportation as the responsible party to contact with the contact information.
- (4) Any other matter mutually agreed upon by the parties at least sixty (60) days prior to the State Management Date, that are necessary to ensure a safe and orderly transfer of management and operation of the State Property.

Section 3. Use of Corridor.

- (a) During the Transition Period, and subject to the terms and conditions herein set forth, the State Property shall be used for the conduct of Rail Freight Service, Intercity Rail Passenger Service, and for the construction of the Commuter Rail System as set forth herein
- (b) It is understood by the parties hereto that, under its management, direction, and control, State shall, subject to the requirements of this Agreement, furnish CSXT adequate facilities including, without limitation, tracks and bridges, for (i) CSXT's provision of Rail Freight Service on the State Property, (ii) CSXT's performance of its obligations to Amtrak under the Amtrak-CSXT Agreement (or as provided by law), in at least substantially the same condition and in substantially the same manner as provided prior to the State Management Date; provided, however, it is further understood that Rail Freight Service and Intercity Rail Passenger Service may be subject to reasonable delays, as hereinafter provided, in order to accommodate construction and implementation of the Commuter Rail System.

Section 4. Operations and Management.

(a) From and after the State Management Date, Section 3 of CFOMA shall apply to all Railroad Operations on the State Property, except as provided below:

(1) The operating windows delineated in Subsection 3(i) of CFOMA may be modified during the Transition Period to accommodate the operation, maintenance, construction, and other activities that may occur on State Property as provided for in the Transition Period Operating and Management Plan agreed upon by the parties pursuant to Subsection 4(c) hereof.

(2) Notwithstanding Subsection 3(j) of CFOMA, State may cause Railroad Operations on the State Property to be interrupted or delayed during the Construction Period as provided herein.

(b) The parties understand and agree that in the course of State's procurement of contractors for the operation and management of the State Property and for the design, engineering, and construction of the Commuter Rail System, prospective bidders must be given access to the State Property. State shall coordinate and be responsible for such access, and shall not allow any access except pursuant to written instructions contained in the contract procurement documents. Prior to the State Management Date such access shall be subject to approval by CSXT, and after the State Management Date, State shall approve such access in accordance with CFOMA.

(c) CSXT and State have agreed to the following (hereinafter the "Transition Period Operating and Management Plan"):

(1) Upon Closing, CSXT will create the Central Florida Dispatcher Desk, which is a new

dispatcher desk for the territory corresponding to the entire 61.5 miles of the State Property:

(i). Northern limits, MP 749.7 of the State Property,

(ii). Southern limits, MP 814.1 of the State Property.

(2) At the north end of State Property, the four interlocked signals at CP South De Land shall be owned and maintained by State. Prior to State assuming dispatch, CP South De Land crossover shall be controlled by CSXT's AA Desk. To route a train onto the State Property, the CSXT AA Desk dispatcher will move the crossover to the required position, then, one of the two southbound signals will be initially requested by the CSXT AA Desk dispatcher. The Central Florida Dispatcher Desk will see a computer screen indication that the signal had been requested but not yet cleared. The Central Florida Dispatcher Desk will then request the same signal and, if field conditions permit, the signal will be displayed and the train will have authority to enter the State Property.

To route a train from the State Property to the CSXT Property, the Central Florida Dispatcher Desk will coordinate with the CSXT AA Desk dispatcher to ensure that the crossover is in the required position, then, one of the two northbound signals will be initially requested by the Central Florida Dispatcher Desk. CSXT's AA Desk dispatcher will see an indication that the signal has been requested but not yet cleared. The CSXT AA Desk dispatcher will then request the same signal and, if field conditions permit, the signal will be displayed and the train will have authority to enter the CSXT Property. The two dispatchers will communicate via a dedicated phone line.

(3) Prior to Closing, CSXT shall retire the existing "back-to-back" automatic

(uncontrolled) signals at MP 813.1 and install new "back to back" interlocking ("controlled") signals at MP 814.1 or as close as practicable to the limits of the State Property. These two signals shall be owned and maintained by State. The northbound signal shall be controlled by the Central Florida Dispatcher Desk. The southbound signal shall be controlled by CSXT's AA Desk.

(4) During the Transition Period, State-funded changes to the existing wayside signaling/interlockings will be limited. If the parties mutually agree, there may be one or more wayside signaling/interlocking field changes, with associated database changes to the US&S system. All field work on the State Property associated with signaling/interlocking will be completed by State contractors. All field work on CSXT Property will be performed by CSXT forces at State's cost and expense, unless State has obtained CSXT's consent to use State contractors to perform the work. The estimated costs of establishing the Central Florida Dispatcher Desk, including field and dispatch center modifications at CP South Deland and in the establishment of new back-to-back interlocking controlled signals at MP 814.1 as contemplated herein are set forth below and shall be shared equally by each of CSXT and State:

<u>Item</u>	<u>Estimated Cost</u>
Field Signal Changes	\$812,000.00
US&S Software Changes	\$200,000.00
CSXT Mainframe Changes	\$250,000.00
US&S Console License and Hardware	\$100,000.00
Communications	\$ 18,000.00

Facility Changes	\$ 7,500.00
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(5) Dispatching of all Railroad Operations on State Property shall be in accordance with the Dispatching Services Agreement between the parties, a copy of which is attached hereto as Appendix C.

(6) CSXT and State agree that during the Construction Period each shall make every reasonable effort to minimize interference with the operations and activities of the other

(7) State shall be responsible for flagging during the Construction Period. The parties shall establish reasonable Curfews to facilitate and accommodate the construction in accordance with the following:

(i) daily Curfews (each a "Daily Curfew"), providing a continuous four (4) to six (6) hours of contractor track time within the daylight time period on all weekdays and weekends (generally from 7 a.m. (0700 hours) until 1 p.m. (1300 hours).

(ii) Curfews will allow the passage of daily Amtrak trains.

(iii) There shall be no more than three (3) Operating Rule 707 work zones within the Corridor at any one time. The maximum length of an Operating Rule 707 work zone shall be seven (7) miles using an Employee in Charge for each Operating Rule 707 work zone.

(iv) Up to thirty (30) extended Curfews (each an "Extended Curfew"), ranging from a 12-hour up to a 54-hour duration (with track outages typically within period from 9:00 p.m. (2100 hours) Friday to 3:00 a.m. (0300 hours) Monday) of contractor track time, to be mutually agreed in accordance with the procedures set

forth in Paragraph 4(c)(9).

(v) Notwithstanding the foregoing, the Curfews and Operating Rule 707 work zones described herein shall not apply to CSXT train operations occurring in areas where State's Design/Build Contractor is not operating.

(vi) The track shall be deemed returned to CSXT by State's Design/Build Contractor when the track is restored and the signal system operational to allow CSXT trains to proceed on signal indication.

(8) State shall provide CSXT, FCEN, and Amtrak at least sixty (60) days notice of Curfews and Signal Suspensions. If Amtrak by separate agreement requires more time for the notice, State shall provide the notice as required by that separate agreement. The notice of Curfew shall include:

(i) Identification of the section of track that is to be out of service.

(ii) Description of the work to be completed

(iii) An explanation why the work requires a Curfew.

(iv) The duration of the Curfew.

(v) The date and time the Curfew will commence.

(9) All Curfews, Signal Suspensions, and Operating Rule 707 work zones noticed pursuant to Paragraph 4(c)(8) shall be reviewed and confirmed during work plan coordination meetings which will occur between State, CSXT, and State's Design/Build Contractor every thirty (30) days. During these work plan coordination meetings, State or it's Design/Build Contractor shall provide detailed activity-by-activity construction schedules, including required outages (defined both in terms of geographic coverage and

duration) for each work activity. Any failure of the parties to reach mutual understanding and agreement during a work plan coordination meeting shall be resolved in accordance with Section 8 hereof or Section 17 of CFOMA.

(10) During the Transition Period, State shall adopt CSXT's Operating Rules and Roadway Safety Rules and may, with the approval of CSXT, supplement such Rules with rules specific to the State Property. The Central Florida Commuter Rail Transit System Flagging Criteria and Orange Fence Policy, set forth in Appendix E to this Agreement, shall be applicable to the State Property during the Transition Period, subject to the ongoing approval of the FRA. After the Commencement Date, State may develop railway operating and safety rules (emergency response, incident report procedures, etc). CSXT hereby gives State permission to use and copy its Operating Rules and Roadway Safety Rules that have been applicable to the State Property, and to incorporate them into State's operating and safety rules. CSXT shall provide a royalty-free license to State and its contractors, for use solely and exclusively on the State Property, allowing State and its contractors to use the CSXT Operating Rules and Roadway Safety Rules with respect to operations on the State Property, as well as printed/electronic training materials and appropriate qualifying examinations for Train & Engine crews, Dispatchers, Field Maintenance Supervisors and Field Maintenance Workers. After the Commencement Date, State may modify such rules to have specific application to the State Property.

(11) CSXT and State have agreed to the Orientation Services Agreement, a copy of which is attached hereto as Appendix D.

(d) CSXT freight trains shall not exceed CSXT published clearance dimensions listed in the

"Railway Line Clearance Manual" over the State Property, without the prior written approval of State.

Section 5. Compensation.

(a) During the Transition Period, CSXT shall compensate State as follows:

(1) Commencing on the Revenue Operation Date, CSXT shall pay to State the Fixed Fee as described in Paragraph 2(a)(i) of CFOMA.

(2) During the Transition Period only, when the State Property will be used by CSXT for Rail Freight Service, by FCEN (pursuant to FCEN's separate agreements with State and with CSXT as described below) and/or by Amtrak for Intercity Rail Passenger Service pursuant to the Amtrak Agreement, CSXT shall pay a share of the actual costs and expenses incurred by State to operate and maintain the State Property, exclusive of the cost of dispatching the State Property, which share shall be the difference between (i) the actual costs and expenses so incurred by State, and (ii) the sum of (x) the share of funds paid by Amtrak to CSXT for use of the State Property that are passed through to the State by CSXT and (y) any funds received by State from FCEN for use of the State Property.

(3) On the Fee Commencement Date, the compensation formula established in Section 5(a), Paragraph 2 of this Agreement shall no longer apply and CSXT shall commence paying the Variable Fee described in Paragraph 2(a)(ii) of CFOMA. The Fee Commencement Date shall be the date agreed in writing by the parties as the date on which the Terminal Facility is complete and in operation so that the trains identified in Section 7 have been diverted to the S-Line. From and after the Fee Commencement

Date, CSXT shall pay the Usage Fee in accordance with CFOMA.

(b) As soon as practicable after the Effective Date, and at least ninety (90) days prior to the anticipated State Management Date, State and CSXT shall establish a mutually agreed annual operation and maintenance budget (which may be adjusted to coincide with the State Fiscal Year) that shall include all projected costs and expenses for operation and maintenance of the State Property at FRA Class 4 status for the year, exclusive of the cost of dispatching the State Property.

(c) On or before the State Management Date, CSXT shall prepay to State one-twelfth (1/12th) of the annual budget amount, and shall transmit such prepayment monthly thereafter.

(d) State shall maintain accounts for the recording of all costs and expenses incurred by State for operation and maintenance on the State Property. All such costs and expenses shall be incurred and paid by State, and, on a quarterly basis, within forty-five (45) days after the end of the quarter, State shall furnish a report to CSXT of the total amount so incurred and paid, exclusive of the cost of dispatching the State Property. On a quarterly basis, within forty-five (45) days after the end of the quarter, the actual expenditures shall be reconciled with the amounts advanced by CSXT, and the future payments adjusted accordingly. If the actual expenditures were less than the total amount paid by CSXT, then the future payments by CSXT shall be reduced by the difference, and if the actual expenditures exceeded the total amount paid by CSXT, then the future payments by CSXT shall be increased by the difference.

(e) During the Transition Period, State shall make available for CSXT's inspection at the State's offices all records pertaining to the operation and maintenance by State on the State Property.

(f) If during the Construction Period, CSXT has the need to provide Rail Freight Service to a customer, but a Curfew will prevent or unreasonably delay the provision of such service, but such service could be accommodated by CSXT using the S-Line at an additional cost, State shall reimburse CSXT for the incremental cost to CSXT of providing the service using the S-Line, provided that CSXT demonstrates in writing the need for such service, that the use of the S-Line was a commercially reasonable alternative to provide the service in a timely manner, and CSXT actually used the S-Line to provide the service.

(g) Place of Payments: All payments to State under this Agreement shall be made payable to "Florida Department of Transportation," and shall be paid at FDOT, OOC - Cashier's Office, 605 Suwannee Street, MS 42B, Tallahassee, FL 32399-0450.

Section 6. Procurement; Design; Engineering; Construction.

(a) State shall be responsible for the design, engineering, and construction of the Commuter Rail System based on Federal, State, and local governmental requirements. The Commuter Rail System is proposed to be built in two phases. Phase I would extend approximately 32.54 miles from the Fort Florida Road station (DeBary) through Seminole County into Orange County through downtown Orlando to the Sand Lake Road station, including the maintenance facility and currently planned stations at DeBary/Fort Florida Road, Sanford, Lake Mary, Longwood, Altamonte Springs, Maitland, Winter Park/Park Avenue, Florida Hospital, LYNX Central, Church Street, Orlando Amtrak/ORMC, and Sand Lake Road. Phase II will consist of (1) a 17.46-mile segment of the Corridor (between Orange County and Poinciana), including stations at Meadow Woods, Osceola Parkway, Kissimmee Amtrak and Poinciana Industrial Park; (2) an

11-mile segment of the Corridor (between Deland and DeBary), including a station at Deland Amtrak; and (3) approximately 0.54 miles of staging areas at the northern and southern ends of the Corridor. State will use its best efforts to complete Phase I by December 31, 2010, and Phase II by December 31, 2013

(b) For Phase I and Phase II of the Commuter Rail System, State plans to enter into a guaranteed maximum price design-build contract or other contract that establishes a firm fixed price for the work.

(c) State shall provide CSXT with a complete set of preliminary engineering drawings and design-build or other bid solicitation documents (including the design criteria and material specifications) on or before November 5, 2007. CSXT shall respond with written comments on or before November 28, 2007. Because of the urgent nature of obtaining decisions in relation to these documents, the time periods in Subsection 8(1) of CFOMA are not to be applicable to CSXT's review and comment on the preliminary engineering documents. The preliminary engineering documents, and any actual construction on the State Property, shall be subject to CSXT approval with respect to grades, degree of curvature, clearances, and braking distances.

(d) If CSXT desires State to include in its design and engineering documents for the construction of any improvements for the benefit of CSXT, CSXT shall submit a written request together with the design and engineering plans therefor to State. State shall, in its sole discretion, determine whether to accept such request and have State's contractor perform the work. All costs for such work shall be borne by CSXT.

(e) Each State contract that requires access to the State Property shall set forth all safety requirements as defined in the design-build solicitation documents, including, without limitation,

clear working limits adjacent to live tracks.

(f) During the Construction Period, State shall provide periodic reports to CSXT on the progress of construction and any changes that may occur. Provided (i) any such changes are immaterial, (ii) State has complied with Subsection 6(c), and (iii) State has accommodated CSXT's comments on the bid solicitation documents, CSXT shall not have any review authority or right to disapprove any design, engineering, or construction as long as same is consistent with CSXT's comments and CSXT's standards with respect to grades, degree of curvature, clearances, and braking distances after State has issued a request for proposals or other written solicitation to enter into a contract. Except as otherwise expressly approved in writing by CSXT, State agrees not to allow construction on the State Property that is inconsistent with CSXT's standards with respect to grades, degree of curvature, clearances, and braking distances

(g) Upon completing construction of each phase, State will be responsible for the Commissioning, according to FTA and FRA standards and procedures. State shall conduct all inspections and tests necessary to demonstrate compliance with State and Federal standards, rules, and regulations, and upon successful completion of all required testing shall obtain all governmental approvals so that the Commuter Rail System can accept paying passengers for transportation

Section 7. Diversion of Trains.

(a) Upon operation of the Terminal Facility, CSXT shall divert, as a minimum, the following trains (or substantially similar trains, however designated at the time) from the State Property to the S-Line, provided, however, that CSXT shall not be obligated to divert any train unless

funding for the projects described in the Master Projects Agreement has been made available, the Central Florida Freight Capacity Projects have been constructed, and all funds identified in the Joint Rail Project Agreements have been made available to CSXT or EVWR.

Through Trains Re-routed to "S" Line			
Intermodal	Q177	approximately Daily	SB
	Q178	approximately Daily	NB
	Q187	approximately Daily	SB
	Q188	approximately Daily	NB
Autoracks	Q255	Daily	SB
	Q258	Daily	NB
Unit Train – Coal*		Daily	SB
		Daily	NB
Bulk – Flyash*		Mon, Thur	SB
		Wed, Sat	NB

* Trains will be re-routed to the "S" Line, but will access State Property from the South.

(b) Upon diversion of the trains identified above, State shall, in accordance with Section 14.02 of the Contract, pay to CSXT in cash or its equivalent the \$25,000,000.00 withheld from the Purchase Price by State under said Section 14.02, with interest and without setoff of any kind except as expressly provided in this Transition Agreement

(c) Upon construction and operation of appropriate substitute facilities and to the extent reasonably practicable at a mutually agreeable time, CSXT will re-route certain freight trains, including, but not limited to the coal and flyash trains identified above, to access the State Property from the South so as to facilitate State construction activities on the State Property during the Transition Period.

(d) For any new or additional scheduled CSXT freight train that is not provided for in the “CFCRT Freight Service Plan (Revision 5)” attached as Exhibit 1 to CFOMA, that CSXT desires to operate over all or a portion of the State Property during the Transition Period, CSXT shall provide reasonable written notice to the State prior to the operation of such train, provided, however, that such trains shall be operated in accordance with the provisions of this Agreement. The parties shall promptly meet and mutually determine how such train will be accommodated in a manner that will cause the least disruption to State's construction activities and other trains on the State Property.

(e) Within forty-five (45) days of the Effective Date of this Agreement, CSXT and State shall negotiate, execute and deliver a Joint Rail Project Agreement (Non-Federal) (hereinafter referred to as the “Roadway Project Agreement” or “RPA”) pursuant to which State will provide funding for the expenses related to the development of supporting roadway and infrastructure to and from the Terminal Facility. Payment for all activities under the RPA shall be made by State on a cost-reimbursable basis to CSXT, EVWR or any affiliate of either, for one hundred percent (100%) of actual costs to a maximum total amount of Nine Million Dollars (\$9,000,000.00). Costs in excess of this amount shall be borne by CSXT.

(f) State shall pay to CSXT at Closing, in cash or its equivalent, the sum of Twenty-Three

Million Dollars (\$23,000,000.00) in order to enable the cessation of certain freight related operations and facilities in Orlando, and the transfer of certain freight trains from the State Property to the S-Line.

Section 8. Communication and Decision Making

(a) The parties recognize and acknowledge that efforts should always be made to prevent disputes through effective communications and timely well informed decision making. To this end, the parties agree to:

(1) Designate a single representative for purposes of coordinating activities between State and CSXT under this Agreement.

(2) Establish and maintain a Responsibility Matrix that sets forth the identification of positions and the individuals (Task Managers), as well as contact information for each person identified, for both CSXT and State who are responsible for day to day performance of those activities necessary to achieve the tasks, due diligence, and decisions leading to the successful completion of the transition necessary for the successful implementation of CFOMA and Freight Rail Service, Intercity Rail Passenger Service, and Commuter Rail Service on the State Property. The initial Responsibility Matrix shall be provided by the parties prior to the State Management Date. Either party to this Agreement may provide changes to the Responsibility Matrix by furnishing a notice of such change to the other party to this Agreement, in the same manner as provided for all other notices.

(3) Hold regular meetings of appropriate personnel. The parties shall schedule regular

meetings of the appropriate persons to monitor the status of work being performed; to discuss any issues that may arise; and, where the parties deem it appropriate to do so, to memorialize progress and the decisions of the individual parties. These meetings shall not be for the purpose of collegiate decision-making and as such are not subject to the Florida Open Meetings Law (Florida Constitution, Article 1, Section 24(b); Section 286.011, Fla. Stat.); and such meetings shall be conducted in a manner to avoid any violation of said law.

(4) Provide timely exchange of information. The parties acknowledge that timely requests for clarification and for information will help ensure a better understanding of issues and problems and lead to the elimination of doubts, uncertainties, and ambiguities, and will cooperate with one another with respect to the exchange of information that each of the parties, in its discretion, considers necessary to fulfill the requirements of this Agreement

(b) The parties acknowledge that disagreements, if any, arising under this Section 9 concerning the designation of representatives, establishing and maintaining a matrix, holding meetings and exchanging information are not subject to binding arbitration.

Section 9. Liability and Insurance.

(a) The provisions of Section 21 of CFOMA relating to insurance shall be effective during the Transition Period, except that the limit of coverage for State's indemnity and liability insurance shall be Thirty Million Dollars (\$30,000,000.00). The self-insurance retention fund shall be Five Million Dollars (\$5,000,000.00).

(b) State shall require any contractor, subcontractor, or other third party who may have access on or to the State Property during the Transition Period to obtain and maintain for the duration of such access an insurance policy or policies with coverage that satisfies the conditions stated in Section 7 of the State published Standard Specifications for Road and Bridge Construction 2007. State shall require State's Design/Build Contractor to adhere to the conditions of Section 7 of the State published Standard Specifications for Road and Bridge Construction 2007. For purposes of this Agreement and said Section 7, the CSXT Easement shall be deemed to be a "railroad right-of-way."

(c) During the Transition Period, Section 19(d)(iii) of CFOMA shall not apply to train accidents between CSXT trains and State's Design/Build Contractor, in which case, liability shall be apportioned according to fault.

Section 10. Incentives and Disincentives.

(a) The parties acknowledge and agree that the full and timely performance with all requirements and obligations set forth in this Agreement and in the Transition Period Operating and Management Plan promulgated pursuant to Subsection 4(c) hereof will enhance efficiency, promote cooperation, and reduce both parties' costs and expenses. Therefore, the parties agree that the establishment of a system of incentives and disincentives to encourage continued and full compliance is in the best interest of both parties. Prior to the State Management Date, the parties shall institute a program of incentives and awards for exemplary performance and early achievement of work, as well as for outstanding performance and quality and creativity of work. Such program may include written commendations, achievement awards, and bonuses.

(b) In addition to the incentives, the parties agree that the following system of disincentives will discourage and prevent actions or inaction that can cause delay or increase a party's costs. The parties acknowledge and agree that actions or inaction as identified below may cause material adverse consequences to the other party, but that the extent of a monetary amount needed to compensate for such consequences is difficult to ascertain at this time, and therefore agree to the payment of the amount hereinafter designated as the compensatory fee, which fee shall constitute full and adequate compensation for the material adverse consequences that may occur.

(1) Throughout the Construction Period, on a daily basis, the parties shall reconcile the delays, if any, that satisfy the provisions of Subparagraph 10(b)(2) of this Transition Agreement (each a "Qualifying Delay") Failure to provide daily notice of an alleged Qualifying Delay in accordance herewith shall constitute a waiver of any such delay for that day and shall extinguish that party's rights to claim a Qualifying Delay for that day.

(2) Qualifying Delays shall be determined as follows.

(i) There shall be two types of such Qualifying Delays in favor of State that shall be determined as follows. (A) Delays of more than thirty (30) minutes that result in work not being performed that had been scheduled to be performed during a Daily Curfew as described in Subparagraph 4(c)(7)(i) (such delays to be herein referred to as a "Daily Curfew Delay"), and (B) Delays of more than two (2) hours that result in the delay or cancellation of a work that had been scheduled to be performed during an Extended Curfew as described in Subparagraph 4(c)(6)(iv)(such delays to be herein referred to as an "Extended Curfew Delay"). However, for up to a cumulative total of five (5) times during the term of this

Agreement, and conditioned in each instance upon CSXT having provided State with notice at least seventy-two (72) hours in advance of the scheduled start of an Extended Curfew that the Extended Curfew will be cancelled and rescheduled, CSXT may cancel such Extended Curfew without such being treated as an Extended Curfew Delay as defined in this Section 10. A canceled Extended Curfew shall be rescheduled upon mutual agreement of the parties.

(ii) A Daily Curfew Delay in favor of CSXT shall occur when State or its Design/Build Contractor exceeds an authorized Daily Curfew by more than thirty (30) minutes of its scheduled end time or State or its Design/Build Contractor fails to clear for a CSXT freight train to pass through 707 limits within thirty (30) minutes of notification. An Extended Curfew Delay in favor of CSXT shall occur when State or its Design/Build Contractor exceeds an Extended Curfew by more than two (2) hours. However, for up to a cumulative total of five (5) times during the term of this Agreement, and conditioned in each instance upon State having provided CSXT with notice at least seventy-two (72) hours in advance of the scheduled start of an Extended Curfew that the Extended Curfew will be cancelled and rescheduled, State may cancel such Extended Curfew without such being treated as an Extended Curfew Delay as defined in this Section 10. A cancelled Extended Curfew shall be rescheduled upon mutual agreement of the parties.

(iii) The duration of a Qualifying Delay related to a Daily Curfew Delay shall not include the first thirty (30) minutes of delay and the duration of a Qualifying

Delay related to an Extended Curfew Delay shall not include the first two (2) hours of delay.

(iv) Delays resulting from Force Majeure, or events caused by the action or inaction of third parties other than the agents or contractor's of the parties, respectively, shall not be counted in determining Qualifying Delays.

(3) The consequences for each Daily Curfew Delay shall be: (i) If the parties agree, for the same day that work is delayed because of a Daily Curfew Delay, that the Daily Curfew can be and is extended on an hour for hour basis to allow for the scheduled work to be performed, then such delay shall not be counted as a Qualifying Delay for purposes of the sum calculated pursuant to Subparagraph 10(b)(4); (ii) If the Daily Curfew time cannot be extended, then the delay shall be counted as a Qualifying Delay and added to the sum calculated pursuant to Paragraph 10(b)(4). At the conclusion of the Construction Period, the sum of the Daily Curfew Delays experienced by either party shall be netted against the sum of the Daily Curfew Delays experienced by the other party to determine the net number of hours of Daily Curfew Delays experienced by State or CSXT. The party in whose favor the net Daily Curfew Delays rests shall be entitled to a Compensatory Fee equal to the product of the number of net Daily Curfew Delays in hours in that party's favor times Seven Hundred and Fifty dollars (\$750.00)

(4) The consequences for each Extended Curfew Delay shall be:

(i) At the conclusion of the Construction Period, the sum of Extended Curfew Delays experienced by either party shall be netted against the sum of Extended Curfew Delays experienced by the other party to determine the net hours of

Extended Curfew Delays experienced by State or CSXT. The party in whose favor the net Extended Curfew Delays rests shall be entitled to a Compensatory Fee equal to the product of the number of net Extended Curfew Delays in hours in that party's favor times One Thousand dollars (\$1,000.00).

(5) Except as otherwise permitted under Subsection 3(i) of CFOMA, for each daily one-way train identified herein that is subject to mandatory diversion in accordance with this Agreement that CSXT fails to divert from the State Property to the S-Line, CSXT shall pay to State a Compensatory Fee of Two Thousand dollars (\$2,000.00) per train trip

(6) State shall be responsible for and reimburse CSXT for any cost or expense imposed upon CSXT by Amtrak arising out of State's Design/Build Contractor's action or inaction resulting in delay to Amtrak trains.

(7) Other than the cost or expense referred to in Subparagraph 10(b)(5), the Compensatory Fee described herein shall be the limit of monetary damages claimed by either party for the delays described in this Section 10, provided, however, that nothing herein shall be construed to limit, modify, or amend the equitable remedies available to the parties under Section 16 of CFOMA or the rights of the parties under Section 19 of CFOMA.

(8) State shall engage an independent consultant that shall, among other things, facilitate the reporting, collection and recordkeeping of the data necessary to calculate the Qualifying Delays. The cost of said consultant shall be borne by State

(c) Upon the conclusion of the Construction Period and the final reconciliation of Daily Curfew Delays and Extended Curfew Delays, the Compensatory Fee shall be determined. If either party claims it is entitled to payment of a Compensatory Fee from the other party, it shall provide

the other party with written notice that clearly and with particularity identifies the net Qualifying Delays in its favor and the amount of the Compensatory Fee demanded. Within three (3) business days after receipt of notice filed pursuant to this Subsection 10(c), the receiving party shall provide the other party with a written response thereto:

(1) If the responding party does not contest the demand, it shall make arrangements to pay the Compensatory Fee within thirty (30) days.

(2) If the responding party disputes the demand, that party shall provide the other party with the notice required by Subsection 17(a)(1) of CFOMA, and the matter shall be resolved in accordance with Section 17 of CFOMA, including, if necessary, binding arbitration.

(d) Upon failure of CSXT to pay a Compensatory Fee finally determined under this Transition Agreement to be owed to State within thirty (30) days from when the Compensatory Fee is due, State may offset such amount from the \$25,000,000.00 withheld pursuant to Paragraph 7(a)(2) hereof. State's payment of any Compensatory Fee finally determined under this Transition Agreement to be owed to CSXT shall be subject to Section 215.422 Florida Statutes (2007).

Section 11. FCEN and Sidetracks

(a) At least ninety (90) days prior to the State Management Date, the parties shall endeavor to meet with FCEN for the purpose of establishing an understanding on the following items that are to be addressed in an agreement between State and FCEN, which agreement shall be subject to the approval of CSXT to the extent it differs from any existing agreement between CSXT and

FCEN pertaining to the State Property as of the Effective Date.

(1) Such agreement shall include, as a minimum, FCEN's and State's rights and responsibilities in respect to each of the following items:

- (i) Identification of the tracks and segments thereof that FCEN has the right to use along the CSXT Easement.**
- (ii) The procedures for entering and exiting the State Property.**
- (iii) FCEN's agreement to comply with all governmental rules and requirements.**
- (iv) Governing operating rules.**
- (v) The minimum insurance that FCEN shall maintain.**
- (vi) Process and standards for State's consent and CSXT's consent that would be needed for the use of any State tracks not identified pursuant to Paragraph (i) above.**
- (vii) Employee qualifications.**
- (viii) Allocation of liability.**
- (ix) Any other item the parties deem appropriate.**
- (x) Compensation by FCEN to State for use of State Property.**

(2) Within thirty (30) days prior to the State Management Date, State and FCEN shall have entered into a written agreement clearly delineating each party's rights and responsibilities for use of the State Property. Said agreement shall contain an acknowledgment by FCEN that nothing in any agreement between State and FCEN shall constitute any waiver by CSXT of its exclusive right to provide Rail Freight Service on the State Property; alter, modify or amend any liability provision between CSXT and

State; or alter, modify or amend any agreement between CSXT and FCEN.

(3) State recognizes that FCEN's right to use the State Property for Rail Freight Service is by virtue of its agreement with CSXT to use the CSXT Easement for Rail Freight Service; that FCEN's provision of Rail Freight Service is pursuant to CSXT's rights and obligation as a common carrier regulated by the STB; and that State is not conferring on FCEN any common carrier rights. Nothing herein shall be construed to alter, modify or amend Section 19 of CFOMA.

(b) During the Transition Period, State and CSXT shall work cooperatively to manage, maintain, repair, upgrade, or remove Sidetracks:

(1) State and CSXT shall mutually agree for each Sidetrack the "precise cut points" as described in the definition of Sidetrack, which provides that State has no financial obligation beyond that point. As a guide for such agreement, said point shall be approximately 150 feet from the point of switch at the main track at the more distant of:
1) the derail, where applicable; 2) the interlocking signal, where applicable, or 3) the insulated joint on the track that defines the limits of the mainline track circuit.

(2) Maintenance of Sidetracks shall be in accordance with Subsection 4(a) of CFOMA.

(3) In order to remove unused Sidetracks, during the Construction Period, that have no foreseeable use in the future, CSXT and State agree to the following process for their identification and removal from State Property. Within ninety (90) days after the Effective Date, CSXT shall identify any Sidetrack located on the State Property that has not been used for the purpose of providing Rail Freight Service or Amtrak's provision of Intercity Rail Passenger Service for a period of thirty (30) consecutive months. State

shall review those Sidetracks identified by CSXT and determine which, if any, Sidetrack could be removed during the Construction Period, and provide to CSXT notice of any such Sidetrack. Within sixty (60) days after State provides the notice to CSXT that a Sidetrack could be removed, CSXT shall contact the shipper or last known user of such Sidetrack and determine whether use of such Sidetrack in the future for Rail Freight Service is reasonably foreseeable. If such use is not reasonably foreseeable, CSXT shall exercise all rights of cancellation under any contract or agreement pertaining to such Sidetrack and upon the date said contract or agreement is canceled, this Transition Agreement and CFOMA insofar as either may pertain to said Sidetrack, shall automatically terminate and be of no further force and effect, and State shall be free to require CSXT to remove such Sidetrack at State's cost and expense (or to obtain CSXT's consent to allow State to remove such Sidetrack), and the materials so removed shall be made available to CSXT or such local third party as CSXT shall designate by notice. If no such contract or agreement exists, then upon the date of State's aforesaid notice, this Transition Agreement or CFOMA insofar as either may pertain to said Sidetrack, shall automatically terminate and be of no further force and effect, and State shall be free to require CSXT to remove such Sidetrack at State's cost and expense (or obtain CSXT's consent to allow State to remove such Sidetrack), and the materials so removed shall be made available as provided above.

Section 12. Concurrent Agreements.

This Transition Agreement is being entered into in conjunction with CFOMA, and

these two agreements, shall be construed with reference to one another and neither agreement shall have precedence over the other except in the event of an irreconcilable conflict and in which case, this Transition Agreement shall govern until termination of this Transition Agreement. Neither agreement may be amended, modified, or supplemented except by an instrument or instruments in writing executed by both parties.

Section 13. Termination and Commencement of CFOMA.

CSXT and State shall agree in writing to a date certain that CFOMA shall commence, which date shall coincide with the Revenue Operation Date and shall be the Commencement Date as defined in CFOMA. Upon said date this Transition Agreement shall terminate. In the event that the parties fail to agree on such a date, the matter shall be resolved pursuant to the dispute resolution procedures of Section 17 of CFOMA, including, if necessary, binding arbitration.

[Signature page follows]

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority,
have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized,
duly attested, to be hereunto affixed as of the day and year first above written.

ATTEST

Lisa Mancini
Lisa Mancini

CSX TRANSPORTATION, INC

By: John M. Gibson, Jr.
John M. Gibson, Jr.
Its Vice President, Operations,
Research and Planning

ATTEST

Jennifer Wynn

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

By: no name down

THE AFOREMENTIONED CONTRACT
HAS BEEN REVIEWED AND APPROVED
AS TO FORM

FUNDS ARE APPROVED AND
AVAILABLE

APPENDICES

- Appendix A** Central Florida Rail Corridor Definitions
- Appendix B** Definitions specific to the Transition Agreement
- Appendix C** Dispatching Services Agreement
- Appendix D** Orientation Services Agreement
- Appendix E** Central Florida Commuter Rail Transit System Flagging Criteria and
Orange Fence Policy

EXHIBITS

- Exhibit 1.** Map and Description of the S-Line.

Appendix A

Definitions Common to Central Florida Operating and Management Agreement,

Transition Agreement and Master Projects Agreement

"AAR" shall mean the Association of American Railroads.

"Amtrak" shall mean the National Railroad Passenger Corporation, its successors and assigns.

"Amtrak Agreement" or **"Amtrak-CSXT Agreement"** shall mean the Agreement dated June 1, 1999, and all supplements thereto, such agreement and supplements being between CSXT and Amtrak.

"Amtrak-State Agreement" shall mean an agreement, if any, entered into by Amtrak and State pertaining to Intercity Rail Passenger Service on the State Property.

"Ancillary Agreements" shall have the meaning given to it in Section 14.01 of the Contract.

"Central Florida Commuter Rail Transit System" or **"Commuter Rail System"** shall mean the Fixed-Guideway Transportation System developed, implemented, operated and maintained by State that will run from DeLand in the County of Volusia through Seminole County and Orange County (including the City of Orlando) to Poinciana in Osceola County on the State Property.

"CFOMA" shall mean that certain Central Florida Operating and Management Agreement dated as of November 30, 2007 by and between State and CSXT.

"Closing Date" shall mean the date upon which the conveyance of the State Property from CSXT to State is effectuated in accordance with the Contract.

"Commencement Date" shall be the date upon which the CFOMA shall become effective.

"Commuter Rail Service" shall mean the transportation of commuters and other passengers by rail provided by State or its assignee or designee

"Contract" shall mean that certain Contract For Sale and Purchase dated as of November 30, 2007 by and between State and CSXT

"CSXT" shall mean CSX Transportation, Inc., a Virginia corporation.

"CSXT Easement" shall have the meaning given to it in the Deed attached as Exhibit 4 of the Contract.

"CSXT Property" shall mean all of the rights-of-way and associated property, and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures located on such rights-of-way and property that connect with the State Property and are owned, controlled or used by CSXT, being properties contiguous to the State Property that were not acquired by State under the Contract.

"Deed" shall mean the deed appearing as Exhibit 4 of the Contract.

"Effective Date" shall (in any respective agreement) mean the date the agreement becomes effective.

"EOT Unit" shall mean a caboose or other non-revenue rail car in a freight train for the use of the train's crew during certain switching operations.

"Execution Date" shall mean (in each respective agreement) the date on which the agreement is executed by all parties

"FCEN" shall mean the Florida Central Railroad Company, its successors and assigns, which as of the Execution Date operates over a portion of the State Property pursuant to certain agreements between CSXT and FCEN but shall, as of the Commencement Date, have entered into a separate agreement with State.

"Fee Commencement Date" shall mean the date that CSXT shall begin paying the Usage Fee as provided in Subsection 5(a)(3) of the Transition Agreement.

"Fixed Fee" shall have the meaning given to it in Subsection 2(a) of the CFOMA

“Fixed-Guideway Transportation System” shall have the meaning given to it in Subsection 341 031(2), Florida Statutes.

“Force Majeure” shall have the meaning given to it in Section 22 of the CFOMA.

“FRA” shall mean the Federal Railroad Administration.

“FTA” shall mean the Federal Transit Administration.

“Incidental Use” shall have the meaning given to it in Subsection 19(a)(ii) of the CFOMA.

“Intercity Rail Passenger Service” shall mean the transportation of intercity passengers by rail provided by Amtrak, or as may be provided by others, on the State Property.

“Master Projects Agreement” shall mean that certain agreement to be entered into between State and CSXT.

“Non-Binding Consolidated Term Sheet” shall mean that certain Non-Binding Consolidated Term Sheet entered into by State and CSXT and dated as of August 2, 2006.

“Rail Commuter Passenger(s)” shall have the meaning given to it in Subsection 19(a)(i) of the CFOMA.

“Rail Freight Service” shall mean the transportation by rail of property and movable articles of every kind, character and description over the State Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the State Property, and supporting activities, over the State Property pursuant to the CSXT Easement and the CFOMA, but excluding detour movements of other railroads permitted by State pursuant to Subsection 3(m) of the CFOMA.

“Railroad Operations” shall have the meaning given to it in Subsection 1(a) of the CFOMA.

“Reserved Easement” shall have the meaning given to it in the Deed.

“Service Plan” shall mean the CFCRT Freight Service Plan (Revision 5) attached as Exhibit 1 to the CFOMA.

“Sidetrack” shall mean tracks on the State Property, owned by CSXT or a third party, approximately one hundred and fifty feet (150’) from or beyond the switch in the main line (with precise cut points to be mutually agreed to), for which State shall have no financial obligation and which are used exclusively by CSXT to provide Rail Freight Service to industries, customers and facilities located along the State Property.

“Sidetrack Agreement” shall mean any agreement between CSXT and a shipper, recipient, and/or other user of Rail Freight Services over a Sidetrack, that governs the ownership, construction, maintenance, repair, and use of a Sidetrack

“State” shall mean the State of Florida Department of Transportation.

“State Property” shall mean all of the rights-of-way and associated property and all of the tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and all other improvements or fixtures thereto, being all of the properties acquired by State under the Contract (the real estate for which is described in Exhibit 1 to the Contract) or acquired by State and used by State for the placement of railroad tracks for Railroad Operations.

“STB” shall mean the federal Surface Transportation Board.

“Transition Agreement” shall mean that certain Transition Agreement dated as of November 30, 2007 by and between State and CSXT.

“UMLER” shall mean the Uniform Machine Language Equipment Register.

“Usage Fee” shall have the meaning given to it in Subsection 2(a) of the CFOMA.

“Variable Fee” shall have the meaning given to it in Subsection 2(a) of the CFOMA.

Appendix B

Transition Agreement Definitions

"A- Line" shall mean CSXT's railroad from MP A 648.2 near Jacksonville to Auburndale, MP A 840.7.

"AA Desk" shall mean the CSXT dispatcher desk that has control over movements on CSXT's A-Line, excluding the territory under control of the Central Florida Dispatcher Desk.

"Central Florida Commuter Rail Transit System Flagging Criteria and Orange Fence Policy" shall mean that policy described in Appendix E to the Transition Agreement.

"Central Florida Dispatcher Desk" shall mean the new dispatcher desk created by CSXT for the territory corresponding to the geographic limits described in Paragraph 4(c)(1) of the Transition Agreement.

"Commissioning" means the control, operation, management, and maintenance of the Commuter Rail System from completion of construction through all Federal and State governmental approvals up to the point in time that the Commuter Rail System is ready to transport paying passengers and be placed into a revenue generating mode by the State according to FTA and FRA guidelines.

"Construction Period" shall mean the time from the date State enters into a contract that includes the construction of or any other work related to the Commuter Rail System to and including the Revenue Operation Date

"Curfew" shall mean a time period scheduled in advance when trains are not permitted to operate on an identified section of track, allowing inspection, maintenance, or construction work on track, signals, bridges, and other structures. **"Curfew"** shall include both Daily Curfews and Extended Curfews.

"Daily Curfew" shall have the meaning given to it in Paragraph 4(c)(7)(i) of the Transition

Agreement.

“Daily Curfew Delay” shall have the meaning given to it in Paragraph 10(b)(2)(i) of the Transition Agreement.

“Design/Build Contractor” shall mean the contractor who is awarded by State pursuant to Section 337.11(7)(a), Florida Statutes, the design-build contract to design, build, construct, maintain, and commission the Central Florida Commuter Rail Transit System

“EVWR” shall mean Evansville Western Railway, Inc., a foreign corporation, registered in the State of Florida, whose principal address is 1500 Kentucky Ave, Paducah KY 42003.

“Extended Curfew” shall have the meaning given to it in Paragraph 4(c)(7)(iv) of the Transition Agreement.

“Extended Curfew Delay” shall have the meaning given to it in Paragraph 10(b)(2)(i) of the Transition Agreement.

“Joint Rail Project Agreements” shall mean, collectively, (i) that certain Joint Rail Project Agreement (Non-Federal) entered into by State and CSXT and dated as of November 3, 2006, as modified by the Supplemental Joint Rail Project Agreement (Non-Federal) Number 1, dated December 4, 2006, as further amended by the Supplemental Joint Rail Project Agreement (Non-Federal) Number 2, dated November 30, 2007, and (ii) that certain Roadway Project Agreement described in Section 7(e) of the Transition Agreement

“Labor Protection” shall have the meaning given to it in the Dispatching Services Agreement.

“Labor Challenge” shall have the meaning given to it in the Dispatching Services Agreement.

“Operating Rules” shall, during the Transition Period, mean CSXT’s Operating Rules and Roadway Safety Rules as of October 2007, as may be revised during the Transition Period.

“Operating Rule 707” shall, during the Transition Period, mean CSXT’s Operating Rule 707

that governs the flow of rail traffic through work zones and sets forth specific requirements for flagging and other safety precautions.

“Qualifying Delay” shall have the meaning given to it in Paragraph 10(b)(1) of the Transition Agreement.

“Revenue Operation Date” shall mean the date that the Commuter Rail System, after having received all State and Federal approvals for operation, is placed in commuter service for fare paying passengers to ride.

“Signal Suspension” shall mean the construction-related removal from service of one or more signals protecting train movements in Traffic Control System or Automatic Block System territory. Such removal shall be for limited duration and shall normally allow for the passage of trains at reduced speed, subject to Operating Rules and consistent with FRA requirements.

“S-Line” shall mean CSXT’s railroad that includes the following: Callahan Subdivision from SM 0.0 to SM 20.0 (Baldwin to connection with Nahunta Subdivision); Jacksonville Terminal Subdivision from SP 635.0 to SP 652.5 (Jax to Baldwin); Wildwood Subdivision from S 652.8 to AR 836.7 (Baldwin to Vitis); Vitis Subdivision from AR 836.7 to AR 856.2; Vitis Subdivision (Lakeland Connection) from AR 856.2 to AR 856.5; and Carters Subdivision from A 851.2 to A 841.4, as depicted on Exhibit 1 of the Transition Agreement.

“State Management Date” shall coincide with the Closing Date.

“Terminal Facility” shall mean that certain rail terminal being developed by CSXT, EVWR or any affiliate, contractor or agent of either of CSXT or EVWR, between MP SX 828.8 and MP SX 834.5 for the purpose of inter-modal movement of freight.

“Transition Period” shall mean the period of time from the Closing Date to the Commencement Date.

“Transition Period Operating and Management Plan” shall have the meaning given to it in Subsection 4(c) of the Transition Agreement.

Appendix C

Agreement No. _____
Financial Project I.D.. _____
F E I.D No. _____
Procurement No.. _____
D.M.S. Catalog Class No.. _____

DISPATCHING SERVICES AGREEMENT

THIS DISPATCHING SERVICES AGREEMENT (this "Agreement"), made as of the ____ day of _____, 2007 (the "Execution Date"), by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC., a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT") Except as otherwise provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A, "Central Florida Rail Corridor Definitions" and Appendix B, "Transition Agreement Definitions."

WHEREAS, CSXT and State have agreed that upon the State Management Date, CSXT shall transfer to State, and State shall implement and be responsible for the operation, maintenance and dispatch of all Railroad Operations on the State Property, with the further agreement that, except as expressly provided herein, CSXT shall perform all dispatching responsibilities during the Transition Period pursuant to a contract with State

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS:

Section 1. Services.

CSXT shall provide all train dispatching over the State Property during the term of this Agreement, except as may occur pursuant to Section 7(a) of this Agreement.

Section 2. Term.

This Agreement shall begin upon the Closing Date and shall continue during the Transition Period unless the parties mutually agree upon an earlier termination date. Upon termination of this Agreement, the State's Operation and Maintenance Contractor shall perform all train dispatching over the State Property.

Section 3. Staffing.

(a) Upon Closing, CSXT will create a temporary new dispatch desk (territory) at Dufford Control Center in Jacksonville in accordance with the provisions outlined in Subsection 4(c) of the Transition Agreement. This desk shall be known as the "Central Florida Dispatcher Desk."

(b) CSXT shall not combine the Central Florida Dispatcher Desk with other dispatch desk territories at any time, except in the case of equipment failure or an emergency. Should CSXT combine the Central Florida Dispatcher Desk with any other dispatch desk territory, it shall so inform State by telephone, using the dedicated line identified in Section 4, below, within one (1) hour of the event, indicating the reason for the combination and the expected duration. Prior to the State Management Date, State shall provide CSXT in writing with the responsible person (or position) and telephone number that CSXT is to call as required by the preceding sentence. State may change such information by notice to CSXT in accordance with the Transition Agreement. Within forty-eight (48) hours after the conclusion of such event, CSXT shall submit a written report to the State that fully

explains the situation and the measures that CSXT will be undertaking to avoid any reoccurrence of the event.

(c) CSXT shall qualify six (6) dispatchers on the Central Florida Dispatcher Desk, in order to staff the Central Florida Dispatcher Desk at all times, twenty-four (24) hours per day, seven (7) days per week, weekends and holidays included. CSXT may use dispatchers who have been qualified on the Central Florida Dispatcher Desk on other assignments when not needed for coverage of the Central Florida Dispatcher Desk.

(d) Other than as set forth in Subsection 3(b) above, the Central Florida Dispatcher Desk shall be responsible for direction, supervision and control over the safe and efficient movement of all trains and on-track vehicles and protection of all other on-track activity on the State Property, including but not limited to movement of CSXT freight trains, Amtrak's passenger trains, and FCEN trains. The Central Florida Dispatcher Desk shall be governed by and subject to current operating and safety rules, procedures and regulatory standards of CSXT and FRA, including emergency procedures, as agreed to with State. The Central Florida Dispatcher Desk shall have responsibility for communications for movements prior to operating on State Property that restricts operations on the State Property.

(e) The Central Florida Dispatcher Desk shall be supervised at all times by qualified CSXT supervisors

Section 4. Communications with State's Design/Build Contractor.

(a) CSXT shall install a dedicated direct telephone line for the purpose of allowing CSXT supervisors to communicate with the State's Design/Build Contractor's supervisors regarding track outages, Rule 707 provisions and other construction-related coordination of the operations on the State Property. A direct line shall be installed for communication between the Central Florida Dispatcher Desk and

CSXT Dispatcher Desk The Design/Build Contractor shall not use existing CSXT radio channels for communication between its personnel and CSXT dispatchers at the Central Florida Dispatcher Desk. However, the existing CSXT communication system will be used for communication between the Design/Build Contractor's Employee in Charge and CSXT dispatchers at the Central Florida Dispatcher Desk. The Design/Build Contractor shall be governed by and subject to current operating and safety rules, procedures and regulatory standards of CSXT and FRA governing working on track, operating equipment, and working near equipment being operated, including emergency procedures, as agreed to with State.

(b) CSXT and State acknowledge that timely and effective communication between the Design/Build Contractor and the CSXT dispatchers at the Central Florida Dispatcher Desk will facilitate the timely completion of the capital improvements on the State Property. CSXT agrees to minimize the use of automatic train dispatching, interlocked signal fleeting and other dispatching strategies that require long cancellation times in order to provide a track outage or otherwise jeopardize timely response to Design/Build Contractor requests.

Section 5. Compensation.

(a) CSXT shall be paid a monthly fee for its contract dispatching of the State Property in the amount of Fifty-eight Thousand dollars (\$58,000.00) per month for each month of the Transition Period (pro rata for the number of days in the first or last month of the Transition Period) This fee shall be modified by the change in annual CPI on each annual anniversary date of this Agreement.

(b) CSXT shall be paid a one-time qualifying expense of Fifty Thousand Dollars (\$50,000.00). This advance payment has been authorized by the Chief Financial Officer of the State of Florida under Section 215.422(14), Florida Statutes.

- (c) There shall be no payment or reimbursement for travel expenses under this Contract.

Section 6. Applicable Operating Rules.

CSXT shall dispatch the State Property in accordance with the CSXT Operating Rules as of October 2007, as may be modified or amended by CSXT.

Section 7. Transition to Operation and Maintenance Contractor.

(a) Upon termination of this Agreement, the State's Operation and Maintenance Contractor shall perform all train dispatching services over the State Property using a dispatch center and supervisory control system to be built by the State approximately six (6) months prior to the Commencement Date. This will provide time for the State's Design/Build Contractor to place in service all of the new/revised interlockings planned for the State Property. For a period of two (2) months prior to the transfer of dispatch from CSXT to State, State's dispatch center shall operate in "shadow mode," displaying all Central Florida track circuit occupancies, switch positions, signal status and the information described in Section 7(b) below. During the "shadow mode" period, it shall not be possible for State or its Operation and Maintenance Contractor to control any equipment under the control of the CSXT Central Florida Dispatcher Desk. State and CSXT shall mutually agree on a date (the "Cut Over Date") when State and its Operation and Maintenance Contractor will take control of dispatch over the State Property, subject to the possible reversion to CSXT described below. The Cut Over Date will be determined at least one (1) month prior to the planned Cut Over Date. Upon the Cut Over Date, State and its Operation and Maintenance Contractor shall assume dispatch responsibility over the State Property, provided, however, that CSXT shall maintain both staffing and all associated equipment (including hardware, software and communications equipment) for a period of seven (7) days (the "Cut

Over Period”) after the Cut Over Date, in case a return to CSXT control is required, and, except for the assumption of dispatch responsibility described above, this Transition Agreement shall remain in full force and effect until the expiration of the Cut Over Period. The Commencement Date shall not occur prior to the expiration of the Cut Over Period. Upon the expiration of the Cut Over Period, CSXT shall maintain all associated equipment (including hardware, software and communications equipment) but without staffing for a period of two (2) months, in case a return to CSXT control is requested by State, provided, however, (i) that State acknowledges that staffing for the Central Florida Dispatcher Desk after the Cut Over Period will not be immediately available, will require re-bidding of the jobs associated with the Central Florida Dispatcher Desk and will incur additional expense to be absorbed by State if State elects to return dispatching responsibility to CSXT, (ii) nothing herein shall require CSXT to accept such return of dispatching responsibility, and (iii) the parties agree that CSXT will not dispatch commuter trains. For the purpose of Section 5 of this Agreement, the Cut Over Period shall be considered part of the Transition Period but the two months after the Cut Over Period referred to above, during which CSXT will maintain the equipment only, shall not be considered part of the Transition Period

(b) CSXT shall make available to the State real-time data transmission of track circuit occupancy of existing mainline and controlled siding (where applicable) trackage north and south of the State Property for a distance mutually-agreed by the parties, said distance to be a minimum of five (5) miles in each direction. If practicable, train ID’s associated with track circuit occupancy shall be provided in the real-time data transmission.

(c) State shall make available to CSXT real-time data transmission of track circuit occupancy of planned mainline trackage at the north and south ends of the Central Florida Rail Corridor for a distance mutually-agreed by the parties, said distance to be a minimum of five (5) miles in each

direction. If practicable, train ID's associated with track circuit occupancy shall be provided in the real-time data transmission.

Section 8. Labor Protection.

CSXT shall be responsible for its Labor Protection costs, if any, occasioned by the provision of services under this Agreement. As used herein, "Labor Protection" shall mean the costs, if any, incurred by CSXT as a result of its provision of the dispatching services described in this Agreement, which costs may be incurred pursuant to the provision of a collective bargaining agreement, bargained by CSXT as a result of this Agreement or pursuant to rule, decision or final order of any governmental agency having jurisdiction thereover. Notwithstanding the above, the parties agree that each shall be solely responsible for their respective risks and costs (including defense costs and liability) associated with any challenge to the transfer of dispatching to the State's Operations and Maintenance Contractor pursuant to law, a collective bargaining agreement or otherwise ("Labor Challenge"). State and CSXT acknowledge a policy of non-interference with respect to labor protective decisions by employees.

Section 9 Liability.

Notwithstanding any other provision of this Agreement to the contrary, Section 19 and Section 21 of CFOMA shall govern the liability of the parties hereto whenever any loss of, or damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs under this Agreement, with the same force and effect as if set forth herein in full.

Section 10. Standard Provisions.

1. Before making any additions or deletions to the services described herein, and before undertaking any changes or revisions to such services, the parties shall negotiate any necessary cost changes and shall enter into an amendment covering such services and compensation. Reference herein to this Agreement shall include any amendment(s).

2. CSXT agrees to provide project schedule progress reports in a format acceptable to State and at intervals established by State. State shall be entitled at all times to be advised, at its request, as to the status of services being done by CSXT and of the details thereof. Coordination shall be maintained by CSXT with representatives of State, or agencies of State interested in the project on behalf of State. Either party to this Agreement may request and be granted a conference.

3. Except for the approved advance payment, payments by State under this Agreement shall be made after satisfactory performance of the services and within sixty (60) days of receipt by State of a monthly invoice. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

4 State has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is

received or the services are received. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to CSXT. Interest penalties of less than one (1) dollar shall not be enforced unless CSXT requests payment. Invoices which have to be returned to CSXT because of CSXT preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to State.

5. The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(23), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which CSXT shall pay to State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to CSXT. If automatic deduction is not possible, CSXT shall pay the transaction fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, CSXT certifies their correctness. All such reports and payments shall be subject to audit by State or its designee. CSXT shall receive a credit for any transaction fee paid by CSXT for the purchase of any item(s) if such item(s) are returned to CSXT through no fault, act, or omission of CSXT. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is requested or returned, or declined, due to CSXT's failure to perform or comply with specifications or requirements of the Agreement.

6. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The vendor ombudsman may be contacted at (850) 410-9724 or by calling the Customer Hotline, 1-800-342-2762.

7. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to State at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to State upon request. Records of costs incurred shall include CSXT's general accounting records and the project records, together with supporting documents and records of CSXT and all subcontractors performing work on the project, and all other records of CSXT and subcontractors reasonably required by State for a proper audit of project costs.

8. The Department of Transportation (the "Department"), during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

9. CSXT shall carry and keep in force the insurance to the extent required by Section 21(f) of CFOMA.

10. Section 15(b) of CFOMA concerning public access to documents shall apply to all documents made or received by CSXT on behalf of State under this Agreement with the same force and effect as if set forth herein in full.

11. CSXT shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement.
12. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date being placed on the convicted vendor list
13. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded, or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.
14. The Department shall consider the employment by CSXT of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act.
15. Pursuant to Section 216 347, Florida Statutes, CSXT may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

16. CSXT shall maintain an adequate and competent staff so as to enable CSXT to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to State, other than those costs within the limits and terms of this Agreement. CSXT is fully responsible for satisfactory completion of all subcontracted work. CSXT, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of State.

17. CSXT and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. CSXT agrees to include this provision in all of its subcontracts under this Agreement.

18. All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

19. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

20. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

21. The dispute resolution and arbitration process of Section 17 of CFOMA is hereby incorporated into this Agreement.

22. Time is of the essence as to each and every obligation under this Agreement

23. The default and breach provisions of Section 16 of CFOMA are hereby incorporated into this Agreement. Venue for any legal proceedings under this Agreement shall be in Leon County, Florida.

[signature page follows]

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, duly attested, to be hereunto affixed as of the day and year first above written.

ATTEST

CSX TRANSPORTATION, INC.

By: _____

ATTEST

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

By: _____

THE AFOREMENTIONED CONTRACT
HAS BEEN REVIEWED AND APPROVED
AS TO FORM

FUNDS ARE APPROVED AND
AVAILABLE

4786193_v24

Appendix D

Agreement No.: _____
Financial Project I.D.: _____
F.E.I D. No: _____
Procurement No.: _____
D.M.S. Catalog Class No.: _____

ORIENTATION SERVICES AGREEMENT

THIS ORIENTATION SERVICES AGREEMENT (this "Agreement"), made as of the _____ day of _____, 2007, by and between STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION whose address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, FL 32399-0450 (hereinafter referred to as "State") and CSX TRANSPORTATION, INC , a Virginia corporation, whose address is 500 Water Street, Jacksonville, FL 32202 (hereinafter referred to as "CSXT"). Except as otherwise provided herein or unless the context otherwise requires, capitalized terms have the meanings assigned to such terms in accordance with Appendix A, "Central Florida Rail Corridor Definitions" and Appendix B, "Transition Agreement Definitions."

WHEREAS, Section 4(c)(11) of the Transition Agreement contemplates that CSXT will (1) provide orientation and training to State personnel and the Operation and Maintenance Contractor selected by State who will be involved in dispatching of the State Property after termination of the Dispatching Services Agreement, (2) provide orientation on rules and procedures to the management of the Operation and Maintenance Contractor and the Design/Build Contractor who will design, engineer and construct the Commuter Rail System; and (3) make available certain supervisors for a period of time as provided herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set

forth, the parties hereto, intending to be legally bound, UNDERSTAND AND AGREE AS FOLLOWS:

Section 1. Dispatcher Training.

(a) CSXT shall make available training using the US&S simulator as applied to the Central Florida Dispatcher Desk territory, including typical dispatching scenarios that include CSXT and Amtrak trains for the purpose of training personnel of the State and the State's Operations and Maintenance Contractor who will be involved with dispatching the State Property. The training shall take place at a mutually agreeable location and on a mutually agreeable schedule but concluding no later than thirty (30) days prior to the end of CSXT dispatch of the State Property pursuant to the Dispatching Services Agreement. CSXT shall be paid Four Hundred and Fifty dollars (\$450.00) per day per use of simulator. Simulator can accommodate up to twelve (12) students per day. The fee includes instructor, print-based materials, and job aides. The training duration shall not exceed 20 classroom days. The trainees shall consist of management and dispatcher personnel of State's Operation and Maintenance Contractor, with an estimated class size of eight (8) students.

(b) There shall be no payment or reimbursement for travel expenses for the services to be provided by CSXT pursuant to this Section.

Section 2 Operating Rules Training.

(a) CSXT shall provide orientation on Operating Rules to Trainers and Examiners of State and of the State's Design/Build Contractor, Operations and Maintenance Contractor, and such other contractors that State may retain. Training under this Section shall take place at a mutually agreeable location and in the field on the State Property as mutually agreed by CSXT and State. It is the intent of this training to provide the Trainers and Examiners of State and its contractors with the basis for

teaching the CSXT Operating Rules to contractor dispatcher, field maintenance and Train & Engine crews. It is not the intent of this training for CSXT to train or qualify the management team, dispatchers, field maintenance personnel or Train & Engine crews of the State's contractors in CSXT Operating Rules. CSXT agrees to provide a royalty-free license limited to application on the Central Florida Corridor for the use of print-based materials, job aides, on-line test tools and computer-based training.

(b) CSXT shall be paid the amount of Six Thousand dollars (\$6,000.00) for each class of up to sixteen (16) students per class. Orientation will include up to four (4) weeks classroom instruction and up to two (2) weeks field/hands-on work. The fee includes the instructor, print-based materials, and job aides, use of on-line test tools and computer-based training.

(c) There shall be no payment or reimbursement for travel expenses for the services to be provided by CSXT pursuant to this Section.

Section 3. Maintenance of Way Supervisors

(a) CSXT shall make available the supervisory (non-represented) employees identified below for consultation and familiarization for a minimum of five (5) mutually agreeable work days within the first sixty (60) days after Closing for State and State's contractor personnel. Such CSXT supervisory personnel shall continue to work their normal work assignment times during this period.

(b) The CSXT supervisory personnel to be made available are:

- (i) CSXT Roadmaster presently responsible for the majority of the State Property
trackage limits,
- (ii) CSXT Signal Manager responsible for the majority of the signals and
interlockings within the limits of State Property,

(iii) CSXT Bridges Manager responsible for managing the inspection and maintenance of the bridges and culvert structures within State Property, and

(iv) CSXT Communications Manager responsible for the majority of the radio installations and communications within the limits of State Property.

(b) CSXT will be compensated at the rate of Three Hundred Sixty-five dollars (\$365.00) per person per position per day.

(c) There shall be no payment or reimbursement for travel expenses for the services to be provided by CSXT pursuant to this Section

Section 4. Term.

This Agreement shall begin upon the Closing Date and shall continue until the Commencement Date.

Section 5. Liability.

Notwithstanding any other provision of this Agreement to the contrary, Section 19 and Section 21 of CFOMA shall govern the liability of the parties hereto whenever any loss of, or damage to or destruction of any property whatsoever or injury to or death of any person or persons whomsoever occurs under this Agreement, with the same force and effect as if set forth herein in full

Section 6. Standard Provisions.

(a) Before making any additions or deletions to the services described herein, and before undertaking any changes or revisions to such services, the parties shall negotiate any necessary cost changes and shall enter into an amendment covering such services and compensation. Reference

herein to this Agreement shall include any amendment(s).

(b) CSXT agrees to provide project schedule progress reports in a format acceptable to State and at intervals established by State. State shall be entitled at all times to be advised, at its request, as to the status of services being done by CSXT and of the details thereof. Coordination shall be maintained by CSXT with representatives of State, or agencies of State interested in the project on behalf of State. Either party to this Agreement may request and be granted a conference.

(c) All payments by State under this Agreement shall be made after satisfactory performance of the services and within sixty (60) days of receipt by State of a monthly invoice. Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

(d) State has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the services are received. If a payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, shall be due and payable, in addition to the invoice amount, to CSXT. Interest penalties of less than one (1) dollar shall not be enforced unless CSXT requests payment. Invoices which have to be returned to CSXT because of CSXT preparation errors shall result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to State.

(e) The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system. Pursuant to Section 287.057(23), Florida Statutes, all payments shall be assessed a transaction fee of one percent (1%), which CSXT shall pay to State. For payments within the State accounting system (FLAIR or its successor), the transaction fee shall, when possible, be automatically deducted from payments to CSXT. If automatic deduction is not

possible, CSXT shall pay the transaction fee pursuant to Rule 60A-1.031(2), Florida Administrative Code. By submission of these reports and corresponding payments, CSXT certifies their correctness. All such reports and payments shall be subject to audit by State or its designee. CSXT shall receive a credit for any transaction fee paid by CSXT for the purchase of any item(s) if such item(s) are returned to CSXT through no fault, act, or omission of CSXT. Notwithstanding the foregoing, a transaction fee is non-refundable when an item is requested or returned, or declined, due to CSXT's failure to perform or comply with specifications or requirements of the Agreement.

(f) A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The vendor ombudsman may be contacted at (850) 410-9724 or by calling the Customer Hotline, 1-800-342-2762.

(g) Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to State at all times during the period of this Agreement and for three (3) years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records shall be furnished to State upon request. Records of costs incurred shall include CSXT's general accounting records and the project records, together with supporting documents and records of CSXT and all subcontractors performing work on the project, and all other records of CSXT and subcontractors reasonably required by State for a proper audit of project costs.

(h) The Department of Transportation (the "Department"), during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the comptroller of the

Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

(i) CSXT shall carry and keep in force the insurance to the extent required by Section 21(f) of CFOMA.

(j) Section 15(b) of CFOMA concerning public access to documents shall apply to all documents made or received by CSXT on behalf of State under this Agreement with the same force and effect as if set forth herein in full.

(k) CSXT shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the performance of work under this Agreement

(l) A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty-six (36) months following the date being placed on the convicted vendor list.

(m) An entity or affiliate who has been placed on the discriminatory vendor list may not submit a

bid, proposal, or reply on a contract to provide any goods or services to a public entity, may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids, proposals, or replies on leases of real property to a public entity, may not be awarded, or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity.

(n) The Department shall consider the employment by CSXT of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act.

(o) Pursuant to Section 216.347, Florida Statutes, CSXT may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.

(p) CSXT shall maintain an adequate and competent staff so as to enable CSXT to timely perform under this Agreement and may associate with it such subcontractors, for the purpose of its services hereunder, without additional cost to State, other than those costs within the limits and terms of this Agreement. CSXT is fully responsible for satisfactory completion of all subcontracted work. CSXT, however, shall not sublet, assign, or transfer any work under this Agreement to other than subcontractors specified in the proposal, bid, and/or Agreement without the written consent of State.

(q) CSXT and its employees, agents, representatives, or subcontractors are not employees of the Department and are not entitled to the benefits of State of Florida employees. CSXT agrees to include this provision in all of its subcontracts under this Agreement.

(r) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

(s) It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida, the

validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

(t) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida

(u) The dispute resolution and arbitration process of Section 17 of CFOMA is hereby incorporated into this Agreement.

(v) Time is of the essence as to each and every obligation under this Agreement

(w) The default and breach provisions of Section 16 of CFOMA are hereby incorporated into this Agreement. Venue for any legal proceedings under this Agreement shall be in Leon County, Florida.

[Signature page follows]

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC. and STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, pursuant to due corporate and statutory authority, have caused their names to be signed hereto by officer(s) or official(s) hereunto duly authorized, duly attested, to be hereunto affixed as of the day and year first above written.

ATTEST

CSX TRANSPORTATION, INC.

By: _____

ATTEST

STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION

By: _____

THE AFOREMENTIONED CONTRACT
HAS BEEN REVIEWED AND APPROVED
AS TO FORM

FUNDS ARE APPROVED AND
AVAILABLE

Appendix E

Central Florida Commuter Rail Transit System Flagging Criteria and Orange Fence Policy

1. Due to concerns for the forthcoming, intense proposed construction on the State Property, the following flagging policies and rules will apply under the following conditions:
2. Provided that orange construction fence is erected at a minimum of 5' from the outside rail, the trains will contact the Employee in charge (EIC) for permission through the respected 707 limits.
3. EIC will contact and announce the train's approach to the POCs Contractor appointed Points of Contact (POCs) will be distributed throughout the 707 limits in which the EIC is protecting.
4. POCs will alert all persons and equipment to move a minimum of 7' away from the rail. All cranes and equipment with the potential of fouling the track such as but not limited to excavators must be locked down or shut down. **No construction or crane activity will be allowed toward the rail.**
5. Work from the 7' mark from the outside rail will continue undisturbed throughout the 707 with the POCs acknowledging the passing of the train with hand signals At anytime that the 5' envelope is encroached, the party must have positive protection from the EIC regardless of the circumstances per the Railway Worker Protection (RWP) rules.
6. This policy of continued work will only be allowed provided that the fence is erected and serving its intended function. It will be the POCs responsibility to inspect and relay to the EIC that the fence is erect and serving its intended purpose to act as a barrier to prevent men and equipment from invading the RWP policy before allowing work to proceed or continue. In the event that the fence is not erected or if an activity calls for invading the 5' envelope, then the EIC must be contacted for protection per the RWP policy. If a fence is not present or functional, then the standard policy of contacting and being accounted for by the flagmen will stand before the release of a train is permitted.
7. Bridge Policy:
 - a. A 30 MPH slow order will be observed whenever a crane is in use.
 - b. All crane booms will be either parallel or away from the track before a train is allowed to pass the location.
 - c. All suspended loads will be secured or lowered to the ground before passing of a train.
8. This Appendix E supplements CSXT's Operating Rules and Roadway Safety Rules, which shall govern over any conflict or inconsistency between this Appendix E with said Rules. Terms herein shall have the same meaning as in said Rules.

Exhibit 1

Map and Description of the S-Line

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[illegible]

**Operations Planning
November 30, 2007**

EXHIBIT 4

EXHIBIT 4

**THIS INSTRUMENT HAS BEEN PREPARED IN FOUR (4) COUNTERPARTS
FOR SIMULTANEOUS RECORDING IN FOUR (4) COUNTIES.**

This instrument prepared by
or under the direction of:

DEED

THIS DEED, made this ____ day of _____, 200__, between CSX TRANSPORTATION, INC., a Virginia corporation, whose mailing address is 500 Water Street, Jacksonville, Florida 32202, and whose Tax Identification Number is _____, hereinafter called "Grantor", and STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, whose mailing address is Haydon Burns Building, 605 Suwannee Street, Tallahassee, Florida 32399-0450, hereinafter called "Grantee,"

(Wherever used herein, the terms "Grantor" and "Grantee" may be construed in the singular or plural as the context may require or admit, and for purposes of exceptions, reservations and/or covenants, shall include the heirs, legal representatives and assigns of individuals or the successors and assigns of corporations or state agencies.)

WITNESSETH:

WHEREAS, Grantor has interests in (i) a line of railroad over which rail freight and intercity rail passenger service are presently conducted, starting at Milepost A749.7 (Sta. 39409 + 00), at or near Deland, Florida, and ending at Milepost A814.1 (Sta. 42718 + 10), at or near Poinciana, Florida, a distance of approximately 61.5 miles, and (ii) certain specified properties contiguous to such line; and

WHEREAS, pursuant to the Florida Transportation Code Section 334.01, *et seq.*, Florida Statutes, Grantee is authorized to acquire Grantor's interests in such properties and such line of railroad (as hereinafter more particularly described) for the purposes of accommodating public demand for commuter rail transportation, roadways and other public purposes including the continued provision of rail freight service by Grantor and intercity rail passenger service; and

WHEREAS, the parties desire that Grantee acquire Grantor's interest in such properties and line of railroad and that Grantor retain, and not transfer to the Grantee, a perpetual easement over a portion of

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such properties and line of railroad, limited for the purpose of the exclusive provision of rail freight service subject to the rights of the National Railroad Passenger Corporation ("Amtrak") under the Agreement dated June 1, 1999, and all supplements thereto permitted by CFOMA (as hereinafter defined), such agreement and supplements being between Grantor and Amtrak (collectively, the "Amtrak Agreement"), it being the intention of the parties that Grantor remain, and the Grantee not become, the rail carrier subject to the Interstate Commerce Act, as revised, the Railway Labor Act, as revised, or any other federal law relating to the provision of railroad transportation on such properties;

WHEREAS, this conveyance is made under threat of and in lieu of condemnation by Grantee of the real property of Grantor;

NOW THEREFORE, that Grantor, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby **RELEASE**, **REMISE** and forever **QUIT-CLAIM** unto Grantee, its successors and assigns, all right, title and interest of Grantor, if any, in and to those certain tracts or parcels of land situate, lying and being in the Counties of Volusia, Seminole, Orange and Osceola, State of Florida, more particularly described in Exhibit A attached hereto and incorporated herein (the "Land");

BUT EXCLUDING and excepting unto Grantee those parcels, rights and interests listed or shown on Exhibit B attached hereto and incorporated herein, as well as all privileges, hereditaments and appurtenances appertaining to any such parcels, rights and interests, and the rights and interests related to the CSXT Easement and the Reserved Easement, both as defined below (the "Excluded Property");

TOGETHER WITH all tracks, rails, ties, switches, crossings, bridges, trestles, culverts, buildings, structures, facilities, signals, crossing protection devices, communication lines, poles, radio masts and other fixtures and improvements which are affixed as of the date hereof to the Land (other than any such property affixed to the Excluded Property) as well as all privileges, hereditaments and appurtenances appertaining to the Land or any of the foregoing (other than the Excluded Property) (the "Ancillary Property" and together with the Land, the "Property").

THE PROPERTY IS CONVEYED EXPRESSLY SUBJECT TO: (a) those rights, interests, contracts, agreements, leases, licenses and easements which are listed or described on Exhibit C attached hereto and incorporated hereof; (b) the rights of Amtrak under the Amtrak Agreement; (c) the CSXT Easement (as hereinafter defined); (d) the [Reserved Easement] (as hereinafter defined); (e) building, zoning, subdivision and other applicable federal, state, county, municipal and local laws, ordinances and regulations; (f) subject to the apportionment provisions of Section 9 of the CFOMA, taxes, tax liens and assessments, both general and special, which may become incurred and payable on the Property, after the date hereof; (g) reservations or exceptions whether or not of record, including, without limitation: reservations or exceptions of minerals or mineral rights; public utility and other easements; and easements, crossings, occupancies, and rights-of-way, howsoever created; (h) mortgage liens pertaining to the Property which liens Grantor shall cause to be released, at no cost or expense to Grantee, within sixty (60) days of the recording date of this Deed; (i) encroachments or any other state of facts which might be revealed from an accurate survey, title search or personal inspection of the Property; and (j) all other existing roads, streets, ways, alleys, party walls, privileges, rights, appurtenances and servitudes, howsoever created.

RESERVING unto Grantor, its successors and assigns, an **EASEMENT** (the "CSXT Easement") **IN PERPETUITY** (as hereinafter defined) **FOR RAILROAD PURPOSES** (as hereinafter defined) in,

over or on the Property within the Land; including, but not limited to, the use of all the tracks or Trackage (as hereinafter defined) within the Property; but SUBJECT TO:

1. The terms, conditions and limitations of that Central Florida Operating and Management Agreement between Grantor and Grantee, dated _____, as amended, altered, cancelled or terminated pursuant to its terms (the "CFOMA"), it being further understood and agreed that the Property constitutes "State Property", for the purposes of the CFOMA.

2. Grantor and Grantee each agree to execute and record any instrument that will be necessary to properly reflect any changes in location or area that are not presently reflected in Exhibit A or to reflect any full or partial release of any rights or property hereunder.

3. Grantor and Grantee agree that the CSXT Easement is not retained to the exclusion of the use of the Easement Area and remainder of the Property by Grantee and its assigns, except for the exclusive provision of Rail Freight Service (as hereinafter defined), and as otherwise set forth in said CFOMA.

4. Grantee shall have the right to disapprove any conveyance, transfer, or assignment of the CSXT Easement, or the grant of operating rights to any third party by CSXT pursuant to the CSXT Easement, provided Grantee will not unreasonably withhold, condition or delay its approval.

5. Definitions of CSXT Easement Terms:

(a) Perpetuity: Until this CSXT Easement is abandoned or terminated, as provided in the CFOMA herein referenced. In the event of abandonment or termination of any portion of this CSXT Easement as provided in the CFOMA, such portion thereof shall automatically be extinguished.

(b) Trackage: The railway tracks now or hereafter located on, in or below the Property, and all supporting materials, facilities and structures appurtenant thereto (rails, ties, tie plates, ballast, drainage structures), together with existing or future control devices, signals, switches, communication lines and poles necessary for the safe operation of rail freight; whether main, spur, siding or sidetrack(s); those existing items being the items hereinabove conveyed to Grantee.

(c) Railroad Purposes: The right to use all Trackage on the Property for the exclusive provision of Rail Freight Service, together with the right of ingress and egress over the Property and any adjacent property owned by Grantee to and from said Trackage and facilities located within the Property.

(d) Rail Freight Service: The transportation by rail of property and movable articles of every kind, character and description over the Property, including but not limited to rail freight transportation service to current and future industries, customers and facilities located along the Property, and supporting activities, over the Property, but excluding detour movements of other railroads permitted by Grantee pursuant to Section 3(m) of the CFOMA.

RESERVING unto Grantor, for itself, its successors and/or assigns, a perpetual easement subject to the provisions of the CFOMA (the "Reserved Easement") for the purpose of access to and maintaining, operating, inspecting, repairing, reconstructing, renewing and/or replacing the existing fiber optic communication systems, signboards, wirelines, and pipelines being that equipment, facilities, systems and other items permitted and described in the contracts, agreements, leases, licenses and easements listed on

Exhibit D attached hereto (the "Facilities") [THIS EXHIBIT IS TO BE OF RETAINED JOINT USE INTANGIBLES ONLY] and incorporated herein in accordance with the Joint Use Agreements between Grantor and Grantee hereunder (the "Reserved Easement Contracts") which easement is on, over, beneath, or adjacent to the surface of the portion of the Land in which the Facilities are located (or to be located) pursuant to the provisions of the subject Reserved Easement Contracts; TOGETHER WITH the further rights to (only to the extent permitted in the subject Reserved Easement Contracts) convey or assign said Reserved Easement, in whole or in part, and (only to the extent permitted in the subject Reserved Easement Contracts) to lease, license or permit third parties to occupy the same solely for the Facilities; PROVIDED that in no event shall Grantor renew, modify, alter or amend such Reserved Easement Contracts or relocate such Facilities in a way which is in violation of the CFOMA or in a way as to interfere with Grantee's reasonable utilization of the Property for its intended use as a commuter and passenger rail system or other uses of Grantee permitted under the CFOMA.

TO HAVE AND TO HOLD the Land, and all the estate, right, title, lien, interest and claim whatsoever of Grantor therein, either in law or equity, and all Ancillary Property, unto the proper use, benefit and enjoyment of Grantee, Grantee's heirs and assigns or successors and assigns, forever.

GRANTEE HEREBY ACKNOWLEDGES THAT THE SUBJECT PROPERTY IS TRANSFERRED AS IS, WHERE IS AND WITH ALL FAULTS, DEFECTS AND CONDITIONS OF ANY KIND, NATURE OR DESCRIPTION AS OF THE DATE HEREOF, AND THAT THERE HAVE BEEN NO REPRESENTATIONS, WARRANTIES, GUARANTEES, STATEMENTS OR INFORMATION, EXPRESSED OR IMPLIED, PERTAINING TO SUCH PROPERTY, THE VALUE, DESIGN OR CONDITION THEREOF, ITS MERCHANTABILITY OR SUITABILITY FOR ANY USE OR PURPOSE OR ANY OTHER MATTER WHATSOEVER, MADE TO OR FURNISHED TO GRANTEE BY GRANTOR OR ANY OF ITS OFFICERS, AGENTS OR EMPLOYEES.

Nothing herein shall supersede the provisions in the Contract for Sale and Purchase dated _____ between Grantor and Grantee (the "Contract for Sale"), the CFOMA, and the Joint Use Agreements between Grantor and Grantee of even date herewith (the "Joint Use Agreements") and in the event of a conflict between the provisions of this Deed, the Contract for Sale, the CFOMA and/or the Joint Use Agreements, the following order of priority is agreed: except as provided in the Joint Use Agreements, to the extent a matter is specifically addressed therein, the provisions of the CFOMA shall supersede all other document provisions; the provisions of the Contract for Sale shall supersede the provisions of the Joint Use Agreements and this Deed; and the provisions of the Joint Use Agreements shall supersede the provisions of this Deed as to the Reserved Easement only. The CFOMA, the Contract for Sale and the Joint Use Agreements are retained at the offices of the Grantor.

The covenants of Grantee herein shall run with title to the Property conveyed, and bind upon Grantee, Grantee's successors and assigns, and anyone claiming title to or holding Property through Grantee, for the continuing benefit of, and remaining enforceable by, Grantor, its successors and assigns.

A survey prepared for Grantee may be referred to in the Exhibits to this Deed (the "Survey"). Notwithstanding such reference, the Survey shall not be binding on Grantor in any manner, Grantee acknowledging that no aspect of the Survey shall either bind Grantor in any manner or obligate Grantor to take any actions whatsoever. Grantor has not reviewed and is not obligated to review the Survey, and Grantor does not and shall not warrant the accuracy, correctness, or legal sufficiency of the Survey.

IN WITNESS WHEREOF, CSX TRANSPORTATION, INC., pursuant to due corporate authority, has caused its name to be signed hereto by its officers hereunto duly authorized and its corporate seal, duly attested, to be hereunto affixed.

Signed, sealed and delivered
in the presence of:

CSX TRANSPORTATION, INC.

By: _____

Print Name: _____

Print Title: _____

Attest _____

Secretary

Print Name: _____

STATE OF FLORIDA)
) SS.
COUNTY OF DUVAL)

I, _____, a Notary Public of the State of Florida and the County of Duval, do certify that, on the date below, before me in said County came _____(X) to me known, and/or () proven by satisfactory current evidence to be the person whose name is subscribed to the above instrument, who, being by me first duly sworn, did make oath, acknowledge and say that: (s)he resides in Jacksonville, Duval County, Florida; (s)he is _____, signing on behalf of CSX Transportation, Inc., the corporation described in and which executed said instrument; (s)he is fully informed of the contents of the instrument; (s)he knows the seal of said corporation; the seal affixed to said instrument is such seal; it was so affixed by authority of the Board of Directors of said corporation; (s)he signed his/her name thereto for said corporation pursuant to Board authority; and instrument is the free act and deed of said corporation; and the conveyance herein is not part of a transaction, sale, lease, exchange or other transfer or conveyance of all or substantially all of the property and/or assets of the Grantor.

IN WITNESS WHEREOF, I hereunto set my hand and official seal, this _____ day of _____, 200__.

My commission expires on:

_____(SEAL)
Notary Public
Print Name: _____

EXHIBIT A

(INSERT DESCRIPTION)

EXHIBIT B
(Insert Excluded Property Description)

EXHIBIT C
(Insert List of Title Exceptions)

EXHIBIT D
(Insert List of Retained Joint Use Intangibles)

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